MICHIGAN SUPREME COURT

SPECIAL SESSION

January 20, 2000 PUBLIC HEARING

COURT CRIER: Hear ye, hear ye, hear ye, the Supreme Court of the state of Michigan is now in special session.

Item 1 99-19 LAWPAC

CHIEF JUSTICE WEAVER: You may be seated.

Good morning, I would like to thank Flint for having us here. We are very happy to be here. I want you to know that Justice Young will not be here until an hour or so later, and he will come and be sitting over here. Next to him is Justice Clifford Taylor; this is Justice Michael Cavanagh; myself, I'm Chief Justice Elizabeth **Weaver**; Justice Marilyn Kelly; Justice Maura Corrigan; Justice Stephen Markman.

We understand that we were going to be welcomed by the chairman of the Genesee County Board of Commissioners but that he has been snowed in and so we are going to get right to business. And we feel very welcome here and I'm happy to be here.

The first order that we have on our administrative agenda for comment is 99-19 which is LAWPAC, Mr. John Pirich. Okay, Mr. Pirich.

MR. PIRICH: Good morning, Chief Justice and Justices--

CHIEF JUSTICE WEAVER: And if when you come and speak, those who are scheduled to speak, if you would identify yourself for us and for the audience. Thank you.

MR. PIRICH: My name is John Pirich. I graduated from Central High School and proud to be back in Flint to appear before--

CHIEF JUSTICE WEAVER: --And Mr. Pirich, let me make this clear. You will have three minutes without any questioning and Mr. Thomas (phonetic) over here will be keeping you honest about it and you will then be--the Justices may or may not have questions thereafter. Okay.

MR. PIRICH: Thank you.

CHIEF JUSTICE WEAVER: That way we can have as many people as possible be able to address us.

MR. PIRICH: I believe my remarks will be very brief. I received a letter yesterday from President Butzel (phonetic)--a copy of the letter from President Butzel (phonetic) that was sent to Mr. Davis which responded to our earlier letter asking about the status of the matter. As we understand it now the committee is going to meet and have its recommendations by the end of February with the Board of Commissioners taking this matter up in March.

And as I also indicated, the next administrative hearing before the Court is May 25th in Marquette. Hopefully, the weather will be a tad bit better. Based upon that representation, our only concern is that between May 25th and the next publication date which seems somewhat of a deja vu issue because we were here almost a year ago arguing--well, we were concerned about that same issue--that that would provide sufficient time.

But I do want to thank President Butzel. It appears that the admin issue that was given in September before the state Supreme Court hearing in Grand Rapids is being honored. We just had not heard anything; we were in the dark as to what the status was. We look forward to having their report and then being able to have a submission to the Court and hopefully a decision by the committee, as I believe Justice Young said that the state Supreme Court would certainly like the Bar to do its own heavy lifting, but if not we will be back before you at that point if we don't have a resolution.

CHIEF JUSTICE WEAVER: Okay. We want to thank you for speaking on top of this issue. And as you know we are in the continuing state of public hearings, so you have properly pointed out that this matter has been heard publically before. We also are aware of the time tables involved with respect to the printing and sending of the Bar dues. So the Court will be acting appropriately.

MR. PIRICH: I thank you for your attention.

CHIEF JUSTICE WEAVER: Okay.

MR. PIRICH: If there are any questions, I would be more than happy to respond.

CHIEF JUSTICE WEAVER: Any questions or comments from any of

the Justices?

(No response)

MR. PIRICH: Thank you very much.

CHIEF JUSTICE WEAVER: Thank you very much, Mr. Pirich.

I do at this time want to recognize that we have some students from--with us today. I know we may have more than one group. I'm not too sure. I had the pleasure of meeting a civics class from a kind of suburb, is that correct? I see the teacher out here and I hope maybe he would identify the school and himself, plus the students stand and we will welcome them.

(Students stand)

TEACHER: (Inaudible)

CHIEF JUSTICE WEAVER: Good. Well, we're glad you're here. We hope you learn something today.

TEACHER: Thank you.

CHIEF JUSTICE WEAVER: Thank you.

Are there any other students here?

UNIDENTIFIED VOICE: (Inaudible) High School (inaudible).

CHIEF JUSTICE WEAVER: Okay. Would the teacher stand and identify--

MS. HALL: Good morning to everyone. My name is Rosie Hall (phonetic) and I represent Victor (phonetic) High School and I have nine students with me today. Will you all stand?

Item 2 99-02 ADR

CHIEF JUSTICE WEAVER: We welcome you. Thank you for coming and again, hope you learn something.

We do understand that there were some other schools that were coming but because of an exams they weren't lucky enough to get to come. And with that, any other schools? All right.

Then let's go to the next item which is 99-02 which is the ADR item. Okay.

I think we have Laura Athens, is that correct?

MS. ATHENS: That's correct. Good morning, Chief Justice Weaver and Justices of the Michigan Supreme Court. I welcome this opportunity to speak with you this morning about alternative dispute resolution.

As a preface to my remarks, I think it's important for you to know a little bit about the nature of my practice. I'm a sole practitioner in Farmington Hills, Michigan. My practice focuses primarily on disability and student rights representation. The cases involve primarily disputes regarding special education eligibility, school placement, related issues, and disciplinary matters. In addition, I serve--I represent individuals who are seeking guardianship of developmentally disabled persons or legally incapacitated persons and serve as a guardian ad litem in these matters.

Although, my area of practice is circumscribed, I really wanted to speak with you today to tell you how extraordinarily valuable alternate dispute resolution has been to my clients and also to tell you from my perspective how crucially important I feel that alternative dispute resolution is to the administration of justice in general.

I would like to take a moment to describe some of the advantages of alternate dispute resolution to all of the parties involved including the litigants, legal counsel, and the judiciary. I will be speaking primarily regarding mediation because that's where the major focus of my ADR practice has been. And by mediation I mean facilitated mediation, that is mediation in which a neutral, impartial facilitator assists the parties themselves to reach a mutually agreeable solution. In terms of advantages to the parties, this gives the parties an opportunity to directly speak to one another and to express their concerns to one other. The parties become active participants in the negotiation process. With the help of a mediator, they identify the issues and concerns, options are generated and evaluated by the parties themselves. Communication and joint problem solving is fostered and often times there is a more innovative and creative solution reached than they would reach through litigation because the resolution is created by and for the parties.

ADR in general is often times more expeditious and more economical; privacy and confidentiality are maintained. Because the parties are actively involved in formulating the settlement agreement, they tend to be more invested and less likely to pursue litigation on the same matters in the future. It's particularly advantageous in situations in which the parties will have a continuing relationship such as in special education where the child will be in the same school for several years and in the same school system potentially for many years. It is also advantageous in divorce matters where the parents continue to jointly parent children even if they are no longer married. Mediation tends to preserve the relationship and teaches the parties fundamental negotiation skills that they can use

if future disputes may arise.

There are also advantages to legal counsel and the advantages to legal counsel I believe are that they reduce--it reduces the divisive nature of litigation, it promotes communication and stability between counsel. They tend to cooperate rather than compete and a win-win philosophy predominates as opposed to win-lose. The role of counselor and advisor is highlighted in the mediation setting.

In terms of advantages to the judiciary, hopefully only genuine issues that cannot be resolved by alternate dispute resolution mechanisms are presented to the court. This preserves precious judicial resources and even if mediation or arbitration only results in a partial success, the issues for trial are narrowed. And finally because the process facilitates communication and cooperation between the counsel, this may result in more stipulations of fact, resolution of discovery and pre-trial evidentiary issues without resort to the Court.

I have brought a couple of very brief articles that I have written on mediation that have been published in our Oakland County Bar Association Latches Journal and I have provided them to the crier of the court. If it would be helpful to the Justices, I have a couple of examples from my own area of practice which illustrate what I feel is the importance of ADR and I would be glad to address that if that would be helpful.

JUSTICE CORRIGAN: Is it fair to ask questions right now?

CHIEF JUSTICE WEAVER: I think she had finished her original presentation, but I think you can.

JUSTICE CORRIGAN: Ms. Athens, I'd just like to clarify your statements here this morning. The State Bar has taken a position that only attorneys should be mediators, whereas the forty-person task force that the Court had has unanimously suggested that mediators should be beyond the legal community and where do you stand on that, just so I'm clear?

MS. ATHENS: I think that in many situations the persons that are not attorneys can serve as effective mediators or neutral case evaluators. You may have someone with particular expertise in a profession such as medicine or engineering or--you know, business that might be a better neutral evaluator than a lawyer would be. I think that in some certain complex matters where the law is complex that mediators are--the parties are better served by mediators that are attorneys.

JUSTICE CORRIGAN: All right. So you wouldn't foreclose the possibility of having mediators beyond the legal community?

MS. ATHENS: That's correct.

JUSTICE CORRIGAN: All right. Thank you.

JUSTICE TAYLOR: Ms. Athens, do you feel that a court should be able to impose mediation on parties who are not requesting it?

MS. ATHENS: Well, mediation by its very nature is a facilitative--mediation is voluntary.

JUSTICE TAYLOR: --procedures, I know that case evaluators are the mediators--

MS. ATHENS: --Right. I do think that it should be able to be imposed and even though typically mediation for example is voluntary, I think the judge could say I want the parties to engage in this particular mechanism of alternative dispute resolution before they bring this matter to my attention. And I do think sometimes that urging--sometimes judges just strongly urge and then the parties on their own select a particular mechanism to use.

JUSTICE CORRIGAN: Just so that I'm clear on your response then as well, a judge in your view should be able to order the parties to the table, but not force them to settle, is that right?

MS. ATHENS: Correct.

JUSTICE CORRIGAN: All right.

MS. ATHENS: Right. And I don't know that they should be able to order binding arbitration. I don't think that that would be appropriate. But to order them and maybe give them an opportunity to select which of the many alternative dispute resolutions methods they think would possibly be most effective.

JUSTICE CORRIGAN: How do you see that with squaring with court ordered mediation in the sense that we already have court ordered mediation so why should we force people to do yet one more thing?

MS. ATHENS: And I guess a part of what the court rules do is talk about the misnomer of court ordered mediation the changing--

JUSTICE CORRIGAN: --The courts in Michigan, yes.

MS. ATHENS: Yes, because typically mediation is the facilitated type that I had spoken of.

Your question is how does that square with the current situation. I guess what I would say is that because there are a number of different methods of alternative dispute resolution that perhaps there should just be the opportunity for the judge to order some form, not necessarily what has been the court mediation under the present Michigan court rule.

CHIEF JUSTICE WEAVER: Is it possible that what you're saying--if you're familiar with the old adage that you can lead a horse to water, but you can't make them drink, but they are much more likely to drink if they get to the water?

MS. ATHENS: Um-hmm.

CHIEF JUSTICE WEAVER: Would you be then saying they should be able--the ability to order parties to the mediation to give an opportunity to see if they are going to participate or not, but if it turns out after they've really been exposed to it and they don't, then that should be the end of it?

MS. ATHENS: Yes.

CHIEF JUSTICE WEAVER: Is that your concept?

MS. ATHENS: That's the concept and--

CHIEF JUSTICE WEAVER: --They are much more likely to do it--a horse is more likely to drink if they get to the water.

MS. ATHENS: Exactly. And I think if there is some choice with respect to which pond they go to in terms of the many different choices for alternate dispute resolution.

I don't know if I have a moment to tell you about a kind of unusual case in which I was appointed as guardian ad litem and arbitrator. At the suggestion of the judge, the parties agreed to be--to make it binding arbitration. Can I take a moment to tell you about that case?

CHIEF JUSTICE WEAVER: We really--we will let you do that in the

(inaudible)

MS. ATHENS: Okay.

CHIEF JUSTICE WEAVER: We have a lot of people to talk to.

MS. ATHENS: I understand.

CHIEF JUSTICE WEAVER: You have one minute and you're trying to answer a question (inaudible).

MS. ATHENS: Okay. In this situation it was a post-divorce matter. There had been a long acrimonious divorce which was highly contested. And after the divorce, the parents could not agree on the special education placement for their severely mentally impaired daughter. I met with the parents. I reviewed the educational file and the court file. I visited both school placements, observed the child and also spoke with school professionals.

Within two weeks of my appointment, I issued an opinion regarding what I thought was the placement that was in the best interest of the child. In that opinion I invited the parents to call me and ask me questions. They accepted the decision without challenge.

So I just feel this is an illustration of how things can move along pretty quickly in a situation where there is a lot of contested issues.

In closing, I would respectfully request that you seriously consider adopting Michigan court rules that expand the use of alternative dispute resolution. Thank you very much.

CHIEF JUSTICE WEAVER: Thank you very much. Any further questions?

(No response)

CHIEF JUSTICE WEAVER: Thank you, we appreciate that.

We also have Zena Zumeta?

MS. ZUMETA: Good morning, Chief Justice Weaver, Justices. My name is Zena Zumeta. I'm a member of the state Bar and I've been a mediator since 1982-- professional mediator. I also teach mediation around the country and I've been an officer and president of national mediation organizations as well.

I don't think I need to say much more in favor of mediation because I think Laura Athens did such a marvelous job. I did want to speak to the issue of

nonattorneys as mediators. In my teaching, I do a lot of teaching; both divorce mediation and other types of mediation and I taught as many nonattorneys to mediate as attorneys. And one of the things I think that bothers me about the idea that only attorneys should be mediation--should be mediators is that I think it is much harder for attorneys to learn to be good facilitator-mediators than other people and I think it's our background that gets in our way. That is we are taught to argue well and we are taught to give advice and both of those things are opposite to what a good facilitator-mediator needs to do.

And so when I teach mediators, what I find often is that the attorneys take a lot longer to get it and to really turn around to be able to let go of the arguing, to let go of the giving of advice and to actually help parties reach an agreement. I think what's in most attorneys' minds is the settlement conference where somebody does say this is what will happen if you don't reach an agreement and that is more coercive mediation. That's what we call muscle mediation; it's not really facilitative. And so for attorney to become a good facilitator-mediator they really do have to step back from a great deal of training.

In my county--in Washtenaw County--and up here in Genesee County, certainly in the family law area and also in other areas of practice as well, there are many successful mediators who are not attorneys. In the family law area, certainly therapists, family therapists, counselors, and educators have been very, very helpful to families. And if they were not allowed to be mediators, if the court couldn't send clients to those types of mediators, I think the children would not be as well served by the attorneys.

Certainly, I don't want to leave the attorneys out. There are many good mediators who have backgrounds as attorneys, but I think it is more difficult for them to do it.

JUSTICE KELLY: Let me assume you've gone (inaudible) and ask you a couple questions. I know you've been in this business a long time, Ms. Zumeta, and I've followed your career over the years. I think we were both active in Women Lawyers.

MS. ZUMETA: You are correct.

JUSTICE KELLY: You mentioned muscle mediation, now we're talking here about mediation here that derives from a lawsuit which is in existence. Have you had--I have had experience and I'm wondering if you have with mediation that's ordered by a court. Sometimes having the court's muscle behind it in such a manner that the litigants feel and the mediators, more importantly feel, they must come to some agreement or they won't--mediators won't be used again, for example, by that

judge. Have you run into that and does that not concern you, if you have?

MS. ZUMETA: I think it does concern me. If the judges are assuming that to be successful as a mediator the parties have to reach and agreement, I don't think that's very helpful. I think Justice Weaver you were talking about leading a horse to water and I think that's a very good analogy. If the expectation is that all the horses will drink, that's not a good one.

JUSTICE KELLY: How do we protect litigants (inaudible) from that kind of muscle?

MS. ZUMETA: If the expectation is that the parties are given an opportunity to reach agreements, but not required to reach agreements, I think that's the approach that can be taken.

JUSTICE KELLY: Is there anything in the rules that we could write that would enhance that expectation?

MS. ZUMETA: I think that's a great idea to put in the observation that facilitated mediation is an opportunity, not an order to agree.

JUSTICE KELLY: Is there anything more we can do than just simply express (inaudible) hope or desire?

MS. ZUMETA: I don't know the answer to that.

JUSTICE KELLY: I don't either. Let me move along to another area. I've done a lot of family law and has practiced before taking the bench and I know that a simple divorce can very easily involve some very complex legal questions--tax sometimes--tax and financial questions--that a lawyer is fit and trained perhaps to handle where a layperson might not be. And I hear you say that lawyers might take longer to train, but I don't hear you say they are not educable.

MS. ZUMETA: Most are educable.

JUSTICE KELLY: Assuming they can be educated, wouldn't litigants be better served--wouldn't litigants be better served to have someone who has that dual training of mediator and attorney once they are in litigation? I certainly--and I don't want you to misunderstand me--believe in alternate dispute resolution, but I'm not so convinced that nonlawyers are appropriate in mediation once the matter has got to

the court. You see--you know, marriage counseling, for example, pre-litigation mediation matters.

MS. ZUMETA: One of the things that I have found over the years in mediation is that as lawyers what we do is we take a dispute that the parties have and we translate it into legal terms and then we help to resolve the legal issues, but we may never resolve the underlying issues that led to the lawsuit in the first place.

JUSTICE KELLY: Well, perhaps that isn't the job of anyone involved in a matter once it's reached the courts in litigation?

MS. ZUMETA: I actually think it would be very helpful if people could in fact resolve the underlying dispute because that's--particularly in the family area--that's what keeps people coming back and back and back into court is that the legal issues were resolved, but nothing else was resolved. And if the mediator can get beyond the legal issues to what the real issues are of the party's that's actually the most helpful thing that can be done.

In terms of legal advice, I certainly want the parties to have that legal advice and I want them to get it from their attorney, but I think to get it from the mediator is very helpful. They do need it though.

There were a couple of issues in the report that I wanted to address. Could I take a couple minutes?

CHIEF JUSTICE WEAVER: Well, I'm not sure that you have--was her time up?

UNIDENTIFIED VOICE: She has some time.

MS. ZUMETA: Thank you.

There were two parts to the report, although I was part of the task force, there were two parts that I wanted to mention that disturbed me a little bit. One is under the 3.216 domestic relations mediation, the judges may recommend a mediator and I have some concerns about that in the sense of race and gender issues if the judges are recommending mediators. And I think that paragraph stands very well without that one sentence and I would recommend that it just be taken out.

The other issue that concerns me is on confidentiality and this is on 2.400 Section (F)(6). The first sentence says, "A mediator shall maintain the reasonable expectations of the party's with regard to confidentiality." and then it goes on to talk about what the confidentiality ought to be, what standards there ought to be. And it seems to me that that first sentence confuses things, that if you're trying to respond

to the expectation of the party's, you don't really no what's reasonable or not--what those are, where the rest of that paragraph really sets out what the expectations ought to be. So again, I think the rest of the paragraph would be much more helpful without that one sentence.

CHIEF JUSTICE WEAVER: Anything further?
(No response)

CHIEF JUSTICE WEAVER: I have something, I would like to go back to the issue of opportunity or the let's get the horses to the water. Do you think that the concern that's surfaced here that there may be some muscling of judges that anticipate or require that the mediators definitely come to a resolution that that could be met if in the rules we make it very clear as to what we mean that it is a getting to the water--an opportunity and that we would know that the great, great majority of the judges here in Michigan do want to follow the rules as long as they are clear and that should there be any astray muscling of the judge that it certainly can be brought to public attention and to the attention of this Court. This Court is willing to step up to its responsibility; we could straighten that out--

MS. ZUMETA: I think that would be wonderful.

CHIEF JUSTICE WEAVER: You think that would be the solution and that we could go on an move ahead.

MS. ZUMETA: I think it would be very helpful.

CHIEF JUSTICE WEAVER: Good. Thank you.

MS. ZUMETA: Thank you.

CHIEF JUSTICE WEAVER: Thank you, again.
How about Richard Barron?

MR. BARRON: Good morning, Madam Chief Justice, members of the Court. I appreciate the opportunity to address the Court.

I am basically in favor of all of the items as I understand to be on the Court's calendar, but I think I feel more strongly about Administrative Order 99-02, the ADR matter which has been discussed. I determined to come down here not knowing that the other speakers and I think things have been more eloquently said by Zema and Laura, than probably I can can or will. But I do feel strongly that in

order to--for the courts to serve the public, we need to expand the methods by which we take what appears to be an ever increasing amount of disputes and try to dispose of them.

I agree and incorporate herein really all the remarks made by the two previous speakers. I don't practice in the domestic relations field, but it's my judgment or estimation that that is perhaps the field that would benefit most--benefit the most from ADR opportunities. I think that's the field in which the mesh between the problems, as Mrs. Zumeta referred to and the judicial machinery is perhaps the most difficult interaction.

I also agree strongly that lawyers in this state are not a pre-set cast and that often depending on the matter involved if a nonattorneys, someone with a specialty in a field or someone simply very experienced in dealings with human beings and resolving their problems is a faster, cheaper mechanism to resolve the dispute than highly skilled attorneys. That's certainly not always the case, but I think there's been cases in my judgment where that is true.

I think this expanding ADR opens a lot of questions like any change does. I think this, like most problems in the judicial system, will be--have to be decided by the trial courts and the judges thereof and I think it will not work unless the trial judges in this state are familiar with alternate dispute resolution. Generally, I'm generally supportive of it and apply it or recommend it conservatively or judicially, if you will. But I think if they do so it would be an improvement for the jurisprudence in this state.

CHIEF JUSTICE WEAVER: Could I ask you this, it is the thought of State Court Administrative Office and the MJI, the Michigan Judicial Institute, the educational arm of the Court, that we would be providing training for the judiciary with respect to the ADR issues. And of course, I should have mentioned that with respect to the force and the opportunity too. Would that in your opinion be a good idea?

MR. BARRON: I think it--I think it's a good idea. I view this--to use another analogy--as judges, like a lot of people, are often too busy hauling water up in the river to think about digging a well and I think this is a good example of that. They are busy people and they are reluctant, I suspect, to take on another project. It's hard for me to understand how this is not going be a project which would not only make their life easier in the long run, but will improve the turn-over in cases.

CHIEF JUSTICE WEAVER: And this is why we do want to here require that they all get together for judicial conferences and we have now brought the Michigan Judicial Institute into the planning for that conference. So it is quite

an educational conference opportunity for judges to be able to get away from the digging for a short time.

Any other questions of Mr. Barron?

(No response)

MR. BARRON: Thank you. I appreciate it.

Item 3 99-64 Canon 7

CHIEF JUSTICE WEAVER: I appreciate you coming. Thank you.

99-64 the Canon 7, and we have here first on the list is the Honorable Michael Sapala, Chief Judge of the Wayne County Circuit Court.

JUDGE SAPALA: Again, for the record, Michael F. Sapala, Chief Judge Wayne County Circuit Court.

CHIEF JUSTICE WEAVER: (Inaudible) issue of time, if you would let me just state that we have received letters on all of these issues, not just 99-64. We do not try to sit here and read letters here. It would be rather tedious; we would have very little time for anyone to speak. But all letters sent to the Court are in fact given to every justice and are reviewed and included in the Court's deliberation with respect to this. So, with that now, your time is fresh.

JUDGE SAPALA: Thank you. Good morning Chief Justice Weaver and to the other members of our Michigan Supreme Court.

Allow me to share some thoughts with you about the proposed rule change. The proposed change would have a substantial impact on the criminal division of the third circuit. As a result, my remarks I think are most appropriate within that context.

Obviously, in Michigan we have an elected judiciary. When challenged a judge must run, as we all know, in a charged, competitive, political environment. And in a county of over two million people, a judge who is running must be able to communicate his or her qualifications to the electorate. And to do so, unfortunately, requires the expenditure of money. Judges not having sufficient independent wealth must raise money, especially if confronted by challengers with independent sources of wealth. Now virtually no one will contribute to a trial judges campaign except lawyers and usually only lawyers that practice before that judge.

We in Wayne County have worked very hard over the last couple of years towards a truly effective structure and fair system for the assignment of counsel by

the judges in the criminal division, and that system has been memorialized by Administrative Order 1999-14. The last year our judges in that division assigned over 600 lawyers to over 12,000 cases. And that system is buttressed by a mandatory educational program that's been in place since 1983. It is my view, and I say it without false humility, but it's my view that an indigent criminal defendant receives no better representation in this country that he or she receives in Wayne County Circuit Court.

The proposed rule would effectively preclude criminal division judges in the third circuit from raising sufficient money to support a re-election campaign by a challenger that solicits monies from any attorney. Now, if there is a problem, if a judge uses assignments as a quid pro quo for campaign contributions or appears to do so, or permits staff to do so, then let us deal with that judge and let us deal with that judge quickly and harshly.

The bench and bar need to sit down, see if there is a problem, and if there is reach a consensus and fix it. And if there is a problem, the solutions must be thought through. Possible approaches might include additional limitations on assignments, a narrower window of preclusion before and after an election, a change in the assignment system, a lower cap on contributions--noting that the current rule prohibits only solicitations to $100, not contributions.

I today would certainly volunteer my efforts to become involved in that endeavor, if called upon.

Judge Collins asked me before I rose to speak to indicate that he wanted it known that he was in support of my comments and I think that his position is important because he was a judge in our court and was a presiding judge of the criminal division and was intimately involved in the system. It is my view that the proposed change may well be an example of the cure being worse than the disease and without any evidence that the patient is even sick.

Any questions?

CHIEF JUSTICE WEAVER: Judge Sapala, just for the record, there's more than one Judge Collins in the state.

JUDGE SAPALA: I'm sorry--

CHIEF JUSTICE WEAVER: You meant Jeffrey Collins--

JUDGE SAPALA: It was Jeffrey Collins.

CHIEF JUSTICE WEAVER: --now on the Court of Appeals?

JUDGE SAPALA: Yes.

CHIEF JUSTICE WEAVER: Okay.

JUDGE SAPALA: Thank you.

CHIEF JUSTICE WEAVER: I don't know if he's here or not, but--

JUDGE SAPALA: He is.

CHIEF JUSTICE WEAVER: Okay. I just wanted to clarify that. Now--

JUSTICE TAYLOR: Judge Sapala, could a citizen in Wayne County worried about the quid pro quo problem come to the clerks office and found out who has been appointed and how often?

JUDGE SAPALA: We have--

JUSTICE TAYLOR: (Inaudible)

JUDGE SAPALA: Justice Taylor, we have absolute accountability in our system. Everyone can find out instantly from the clerk or from my office who has been assigned to which case.

JUSTICE TAYLOR: --grand total so--I mean if somebody came in and said how often does Judge A appoint Lawyer X, can they get that?

JUDGE SAPALA: Yes.

JUSTICE TAYLOR: And how much has he been paid and so on?

JUDGE SAPALA: Yes.

JUSTICE TAYLOR: Okay.

JUDGE SAPALA: And I have received inquiries about lawyers--about judges I should say with great frequency; some of those inquires amounting to complaints. In the two and a half years that I have been chief judge no one has ever approached me even intimating that there was any kind of a problem with this

system, that there was a quid pro quo in assignments--and of course that's anecdotal in that sense. But on the other hand, since I am the focus of complaints and inquires about the system, I think it's of some moment that no one has ever approached me. If they had, I would deal with it--believe me.

JUSTICE CAVANAGH: Judge Sapala, I know in the past there have been concerns voiced about the appoint of--or the assignment process in the Wayne probate. Is--mechanically today--is the process similar to the process that the third circuit employs?

JUDGE SAPALA: Justice Cavanagh, I would prefer to defer a response to that question to either Judge Mack or perhaps to Judge Burton who has overseen the probate court for a number of years. I think it would be more appropriate if they would respond to that.

JUSTICE CORRIGAN: Judge Sapala, one of the reactions that I've heard in the light of this particular canon being circulated as a proposal for notice, was a reaction that taking the appointment process completely out of the hands of judges would cure the perception of a quid pro quo because I don't think we are aware of any direct quid pro quo activity. The problem is public perception. And just so I understand it a little more clearly, what's your position on improving the--or changing the process of appointment? Is it essential that judges continue to appoint in your view or could this work be done by a court administrator and then remove this from the perception of quid pro quo?

JUDGE SAPALA: Justice Corrigan, this is a subject about which I have spent considerable thought and time. I have been a practitioner in the old Recorders Court for a number of years, I've been a judge in that court for a number of years, and I still hold the position that affording the judges the opportunity to make these appointments of the lawyers to the indigent defendants provides us with the best possible means to assure the best representation. That's only independent of the issue of campaign contributions--we're talking now what is the best way to provide representation to these folks.

We spent a considerable period of time, as I said, with an educational quota that is mandatory--the lawyers must take to get the assignment. We have a tiered system--capital, noncapital. Every morning the judge who is on his or her two week rotation gets the 15 to 20 assignments before them. There is a police report attached to that assignment. The judge looks at the facts of that case, knows the lawyers, has the list of available attorneys and then can make the assignment based upon that judges knowledge of that attorney with that defendant. An administrator

in a court our size could never make that determination.

I guess it's possible to set up a system where you have an administrator with staff that might ultimately get there. But I'm not sure I'm prepared to deal with another layer of administration. Judges are accountable. We've got the canons. We act within our oath. The public can see what we do quite clearly. They can see which lawyers are getting which assignments. It's not a perfect system, but in terms of all the alternatives that have been suggested I don't see a better one.

And I know the Court is familiar with the administrative order that I submitted some time ago that has memorialized our system, that's available for anybody examination, that lays out exactly what we do and how we do it, and the limits on assignments.

Perception is critical obviously. I understand how the public might think this doesn't seem right, but nonetheless, because of the reasons I gave, judges have to be able to fund their campaign. And if anyone has complained about any judge, then let's deal with that complaint individually. I think the perception should be satisfied by folks knowing that we have done everything within our power to ensure a good system of representation accountable to the judges.

JUSTICE KELLY: Judge Sapala, I, like I'm sure many of my colleagues, have great respect for you and know your career and distinguished service. And with that in mind, I'm interested in knowing, what if anything, you suggest we do to make sure that people who do have complaints or might have complained about misuse of the system in this way--in this area--can bring their complaint and effectively challenge a judge's misuse of the system?

JUDGE SAPALA: I believe that the first place to start is with the chief judge of a particular court where a problem is perceived. It is that person who is in the best position to respond, to make inquiry to see if it need go any further than that. I suppose we can set up a more formal structure for doing that, but it seems to me that's where you should begin.

JUSTICE MARKMAN: Judge Sapala, do I understand you correctly that--or do I interpret you correctly that in the best of all worlds this might be an appearance problem that we would want to avoid, but given the realities of the contemporary system, the advantages of the status quo, outweigh the advantages of the proposed reform, is that a fair summary of what you're saying?

JUDGE SAPALA: I think that is--Yes. I think, Justice Markman, that's a fair way to kind of summarize our position.

JUSTICE MARKMAN: So you're not unaware obviously of the appearance problem. It's simply a problem that we may have to tolerate in light of what you think would be so--I guess I think you felt there would be an unequal playing field as between the incumbent judge and the challenger in terms of the universe of lawyers from whom they could seek contributions if this proposed rule went through?

JUDGE SAPALA: Yes.

JUSTICE MARKMAN: Is it also your view, just so I understand you correctly, that somehow this has a much more damaging impact on the judiciary and the more populous urban counties of the state? Why would that be the case in light of the fact that you have a larger universe of lawyers from whom to pursue campaign contributions?

JUDGE SAPALA: Only in Wayne County do we have a criminal division, I think. I'm not aware of any other circuit in the state of Michigan that has a division of its court dedicated solely to the disposition of felony cases. As a result, that universe of lawyers that we talk about that appear in front of those judges are criminal practitioners exclusively. In all of the other courts will have a potpourri of attorneys, as it were, appearing in front of the judges because of blended jurisdictions as it were. So I think the problem is unique in that sense to Wayne County and that's why I think I preferenced my comments by indicating that I was going to be addressing the issue within the context of Wayne County.

CHIEF JUSTICE WEAVER: Judge, you did say that it--it's my understanding that you particularly feel that your system involved in the criminal division is a particularly good one--

JUDGE SAPALA: Yes.

CHIEF JUSTICE WEAVER: --and that you have tried address all these things, but I think I heard you say that you would not address these things in Wayne County Probate Court--

JUDGE SAPALA: Correct.

CHIEF JUSTICE WEAVER: --or what is going on in the other counties?

JUDGE SAPALA: I don't think it would be fair for me to do that.

CHIEF JUSTICE WEAVER: But that you really stand very strongly in support of the system you have and you do not know whether the other places, even with Wayne County Probate Court, what system they have to try to address it?

JUDGE SAPALA: That's a fair statement.

CHIEF JUSTICE WEAVER: You have urged upon us your system and a good one--perhaps it would be good one with the other counties, you don't quite know because you don't know what they're doing, right?

JUDGE SAPALA: It think it's a fair statement.

CHIEF JUSTICE WEAVER: Okay. Is that a fair statement--

JUDGE SAPALA: Certainly.

JUSTICE TAYLOR: Judge Sapala, you know generally in the United States when people are concerned about this quid pro quo and that sort of thing--they go to great formal methods of disclosure. That is to say telling the public who has contributed and so on. Of course, here we have a situation where there's half of the loop is contributing and the problem is is that there's a perception that there might be a pay-off somewhere down the line. Do you think we need to formalize the methods of disclosure of that information a bit more even as we have in this state with the first half--that is who donates--I mean do you think we should have a system where the court reports to the Supreme Court and it's available for public inspection--newspapers for example, an encyclopedic overview of what has gone on with appointments, and not just your court but every court in the state that does appointments?

JUDGE SAPALA: I think that makes a lot of sense. (Inaudible) Justice Markman was talking about balancing--working within the context of the real world and in trying to deal with perception as such. I think your suggestion would go a long way toward alleviating that concern. I don't think you have any judge or lawyer could reasonably stand before any of you or any of us and say for some reason the monies I give to a judge should not be disclosed or the assignments that I receive from a judge should not be disclosed. I don't know any rational argument that would support that position. So, I think perhaps the more structured formalized system of reporting of acknowledgment, would make some sense.

JUSTICE TAYLOR: Would it make sense to have--I know you haven't thought a lot about this, but I just am curious--you know your system so well--and yours would probably be the most complicated of any in the state. I mean would you think that what should happen is that the clerk of Wayne Circuit Court should--let's say annual or semi-annual, something of that sort--make a report as to who's got appointments, who appointed them and the amount of money they received, something like that so that that would be available for inspection not only at the clerk's office in Wayne County or Muskegon County or whereever, but also in Lansing?

JUDGE SAPALA: I think that should be a court responsibility. I wouldn't want the county clerk doing that. I think that should be--

JUSTICE TAYLOR: --All right. So you feel the chief judge should do that activity?

JUDGE SAPALA: Yes, I think that's something that should be--certainly (inaudible) chief judge ruling in terms of the administration of the business of the Court.

JUSTICE TAYLOR: How do you think--How do you think chief judges would react? Do you think that is an onerous kind of burden?

JUDGE SAPALA: They might, but they don't have to accept the job I suppose.

CHIEF JUSTICE WEAVER: Chief Judge Sapala--

JUDGE SAPALA: --But I don't really think it's that onerous.

JUSTICE TAYLOR: It would seem to me to be a computer entry.

JUDGE SAPALA: Yes.

JUSTICE TAYLOR: I mean you punch it in and every six months you run it out and print it up.

JUDGE SAPALA: And none of those people deal with at all the numbers that we deal with and we've got a pretty good handle on it.

JUSTICE TAYLOR: You think it would be doable at your court--

JUDGE SAPALA: Yes.

JUSTICE TAYLOR: --(inaudible)

JUDGE SAPALA: Absolutely doable.

JUSTICE CORRIGAN: I just want to clarify one other part of your testimony just to understand what you're saying. If a Michigan citizen had direct evidence of a quid pro quo occurring, in my view that would be a criminal bribery.

JUDGE SAPALA: Yes.

JUSTICE CORRIGAN: So, I want to understand why you think a citizen should report to the chief judge rather than versus the citizen's opportunity to go to the prosecutor federal or state in that sense.

JUDGE SAPALA: That's a fair comment. I in no way intended to preclude a citizen who felt a crime had conceivably occurred go to the chief judge first. I think what I really meant to say was I think if a letter had some concerns or there was a fair or whatever short of sufficient belief that there was evidence of a crime that the natural person to go to would be the chief judge of that court and clearly if that person came to me and there was evidence of wrongdoing, then that kind of wrongdoing should be referred to the prosecutor without hesitation.

JUSTICE CORRIGAN: All right. One other question I had was you made an offer to participate in a study commission, task force, whatever. If this Court were to take you up on that suggestion would you just propose to us some general areas of the charge to that committee--

JUDGE SAPALA: Yes.

JUSTICE CORRIGAN: --that you receive logical? You don't have to say it here, but maybe if you want to in writing?

JUDGE SAPALA: I would be happy to do that.

CHIEF JUSTICE WEAVER: Any other questions of Chief Judge

Sapala?

(No response)

JUDGE SAPALA: Thank you all.

CHIEF JUSTICE WEAVER: We thank you very much for coming. Next presenter is Margaret Costello.

MS. COSTELLO: Good morning, Chief Justice Weaver, Justices. I'm here--Margaret Costello--here this morning on behalf of the Women Voters Association of Michigan as president of that organization. We have discussed a proposed change or amendment to Canon 7. The board of directors of the Women Lawyers Association which includes representation from throughout the state recommends that this amendment not be adopted for the following reasons.

First of all, as Judge Sapala indicated, the consensus was that there has been no real assessment as to whether a problem exists, and if so, to what extent the problem exists if it is particularized to specific individuals, or specific counties. There was no information to that effect. The perception of the lawyers in the various counties that are members of our organization was that there was not a significant problem in this regard. However, if others believe there was or there is, then certainly that problem should be addressed. However, that--that is not understood at this point.

If the problem exists, even assuming there is one, this is not the fix--this proposed change. And we believe it is bad fix for the following reasons. First of all, it has a chilling effect on lawyers who know the most about judges being able to financially help in some small way those judges and those candidates who they feel are good for the judiciary and for the system.

Secondly, and more important perhaps and Judge Sapala alluded to some of these things and specifically spoke to some of them which I won't--won't to speak to in great detail--but more importantly, there is an overemphasis that seems in this fix on money. And quite frankly, the monies involved in most instances are not very large. We can look at the campaign contributions from virtually any elected judge and who contributed those and we're talking one hundred--two hundred--you know, maybe in some instances a bit more.

But if there is a problem, the overemphasis on money is not the issue. If there is a quid pro quo or an appearance problem as has been discussed, the money issue isn't going to fix it because there are many other ways, and in fact, many more significant ways that a judge can be helped by lawyers other than the contribution of $100 or $200. If would be much more important to many judges or candidates, for example, if a lawyer went out and got them 500 signatures for their petition then it

would be to give some money. If would be more important, for example, if lawyers made phone calls.

But it would be very easy--it would be very hard to police this change and it would be very easy to get around it. If, for example, I were seeking appointments and I--so therefore I couldn't contribute to those judges, that by giving appointments I could ask a friend to contribute--maybe they wouldn't--you know, it wouldn't be a direct thing, but friend--well, you know, judge I can't contribute, but I know Mary Brown will be contributing to your campaign. I mean those are very easy things to get around if in fact--you know, we think that judges are in that--or are going to be responding to those kinds of things.

One other issue that Judge Sapala spoke to is the specific issue in counties like in Wayne County where you may have a group of judges running for re-election, some of whom are criminal, some of whom are not--who are civil and do not give appointments. Well, in my thought conceivably those judges--those civil judges are at an advantage because they of course could get the campaign contributions when they in fact are running again in the same group as those criminal judges if they are opposed--those judges on the criminal docket.

And finally, we believe that contrary I guess--or maybe an extension of what Judge Sapala said, there might be a disparate effect on women and minorities candidates in some area of the state, not necessarily the larger areas where women and minorities depend for a larger--to a large extent on small contributions as opposed to those who have the wealth to perhaps run their own campaign if those contributions weren't given.

But the biggest real--real background is--to the discussion is that if there is an appearance problem, it is not solely that the judges are getting money and giving appointments. There are many other ways that there's perception out there that judges--that you know, may influence people about judges that would not have to do with money even in terms of rulings. I mean if a person contributes to a campaign and they don't get appointments, does that mean they're more likely to get a summary disposition granted. I mean there's all kinds of perceptions like that that float around. Whether they're real or imagined needs to be studied to some extent if any change like this is going to be taken into account.

And if there is found to be a problem, we believe that a task force or some--some commission or at least some group ought to study what the proper fix is. It could involve things like more open records, as was discussed, it could involve things like other types of assignment systems. It may not be the same fix all around state. It may involve--it may and some discussion always evolves around this issue, that perhaps our system of selection of judges may need work as well and if perhaps the election system is not the best system for selecting judges, but that's a much larger issue as I'm sure all you Justices understand.

I'll entertain any questions.

CHIEF JUSTICE WEAVER: Questions of anyone?

JUSTICE KELLY: I want to understand the process here. Are you the current president?

MS. COSTELLO: I am the current president.

JUSTICE KELLY: How was your--how as this vote arrived at, did you survey your membership?

MS. COSTELLO: What we do is we accept questions or queries from our members that want us to look at and examine certain issues and take a position if we feel is appropriate. This was one of those queries that came in. That has been circulated to--each region has a representative--each of our regions around the state--that is circulated to our regional representatives and told it will be an agenda item for the board meeting which was held this past Saturday. Those regional representatives then, to the extent that they can talk to their leadership in their region, their members, and then our board consists of regional representatives and several members-at-large, and the discussion and consensus which I referred to today was arrived at at that meeting.

CHIEF JUSTICE WEAVER: Thank you. How many regions do you have?

MS. COSTELLO: Fourteen.

CHIEF JUSTICE WEAVER: Fourteen--so you have your board fourteen plus?

MS. COSTELLO: Fourteen plus I believe eight directors-at-large.

JUSTICE KELLY: I am pleased to see Women Lawyers taking a position and bringing it to us. I think that is an appropriate function of the Women Lawyers Association and I'm interested--and I understand from what you've said that the board believed that there wasn't a problem such that this proposed change was needed, is that correct?

MS. COSTELLO: Correct. The perception of that board was that

they--the perception of the members of the board and their--the people who they represent was that they do not see a significant problem, if any, however, there was no scientific study done of that whether there is or not a problem. And there is a recognition that there may be a problem or a perception of a problem, but that we believe needs more study before a fix is implemented and if a fix is to be implemented, this simply is not the right fix.

JUSTICE KELLY: I also understand you to say that you--the Women Lawyers does not believe that the system as it presently exists is detrimental to the interest of women in the profession?

MS. COSTELLO: That's correct.

CHIEF JUSTICE WEAVER: It came to your attention from one of your members?

MS. COSTELLO: Yes.

CHIEF JUSTICE WEAVER: Okay. How large is your organization?

MS. COSTELLO: Eight hundred members.

JUSTICE MARKMAN: Ms. Costello, can I ask you one thing?

MS. COSTELLO: Sure.

JUSTICE MARKMAN: The sub-theme of your testimony here is very interesting to me and it may well be right, but it is basically--and I don't want to mischaracterize what you're saying that why focus too much attention on this particular appearance problem when there are some many other potential other appearance problems. And again, there may be some merit to what you say there, but that is a troubling reflection on the system, isn't it?

MS. COSTELLO: Well, I think--I don't know if I meant to say it in that--you know, in that negative framework. I think that the way that I meant it and the way that it was presented to me was that the money really isn't that much of an issue if--if, you know, if people believe that a couple hundred dollars is going to sway a judge or that there aren't other things that could equally sway the judge if the judge were to be swayed--

JUSTICE MARKMAN: The in-kind contributions--

MS. COSTELLO: --in-kind contributions, friendships--you know, who knows what. And you know, things that are perhaps indirect contributions from organizations or whatever and so if--that's just simply saying that if there is a problem as was previously pointed out, we don't know that there is and we don't see, but if there is--

JUSTICE MARKMAN: You've acknowledged that there is an appearance--or at least a potential appearance problem, haven't you?

MS. COSTELLO: Well, no I haven't.

JUSTICE MARKMAN: (Inaudible)

MS. COSTELLO: I think that if that is--you know, that is not--that that was I guess that was my first point which I didn't make very articulately is that there hasn't been any documentation except that some people apparently feel--and we don't know who those some people are and how wide spread it is, or if it's the general public or if it's disgruntled lawyers that perhaps aren't good enough and shouldn't be getting assignments, I mean we don't know who--we don't know who the they are and until that is known I guess we can't really comment--

JUSTICE MARKMAN: You're saying there's not proof of an actual quid pro quo and I would agree with that. I've no evidence, no indication that the judges--not only in Wayne County, but elsewhere, are not entirely honorably people, but that's different from the appearance problem.

MS. COSTELLO: But even on the appearance problem we--I mean we don't have evidence of an appearance problem. I mean we don't have people coming to us saying it appears to be a problem because we're giving contributions and we're getting appointments or we're not giving contributions and we're not getting appointments. I don't know that there is that appearance problem. It's a potential problem certainly.

JUSTICE MARKMAN: Potential appearance problem?

MS. COSTELLO: Yes, I mean it's a potential appearance problem, but until--I guess we don't know who those are that are--to whom it's appearing to be a problem. It is not our organization.

JUSTICE MARKMAN: Okay. Thank you.

CHIEF JUSTICE WEAVER: Any further questions?

JUSTICE CORRIGAN: Did you review Mr. Mulkoff's testimony at any of these previous public hearings from the Criminal Defense Attorneys of Michigan in the board's deliberation with regard to this position?

MS. COSTELLO: It was an--

JUSTICE CORRIGAN: --And how did you deal with Mr. Mulkoff's position on this?

MS. COSTELLO: It was commented on--we did not read it and review it at the most recent board meeting, and we did not want to take--we did not want to take a position pro or con any other person or organization, this is simply the Women Lawyers' perception and the Women Lawyers' position on this issue.

JUSTICE CORRIGAN: What about the spokesperson from Common Cause, Karen Holcolm-Merrill (phonetic), who supported this amendment--did your board at all consider her comments in regard to this being a sound improvement in the administration of justice?

MS. COSTELLO: Yes. I mean were aware of various comments and it was discussed. Reasonable minds can differ. It is our position that it would not--that it is not a reasonable fix, if in fact there is a problem.

JUSTICE TAYLOR: Judge Sapala indicated that he thought a disclosure system might be appropriate. Any thoughts on that?

MS. COSTELLO: Yes, that was one of the--that in fact was one of the alternative suggestions that in fact--let me preface this by saying that the main thing was we thought that this proposal was premature and that more study needed to go into is there a problem, how much effort needs to go into fixing it, and what the fix should be. But yes, that would certainly be--there was no strong dissension to that, to looking into and exploring other types of assignment of situations, or even going more deep perhaps, as I said, to the selection process of judges.

CHIEF JUSTICE WEAVER: Any further questions?

(No response)

CHIEF JUSTICE WEAVER: Thanks again.

MS. COSTELLO: Thank you for your time.

CHIEF JUSTICE WEAVER: Dawn Isom (phonetic) or Ison?

MS. ISON: Good morning, Justice Weaver and Justices. I am Dawn Ison and I am the vice president of the Women Lawyers Association Michigan Wayne Region and I am here in support of our state president, but also because I am a practicing lawyer in the courts where assignments are given and I am a recipient of assignments. And I'm here to give the Court a practical perspective of what I perceive is happening in the courts.

I would also indicate that I'm the former president of the Recorders Court Bar Association and I heard other lawyers and new lawyers and lawyers trying to break into the system and their comments and not at any time have I ever heard a lawyer say that he or she was unable to receive an assignment because they failed to contribute to a judge's campaign. Now, they may have complained about a number of other things, but contributions to a judge's campaign is not one of them.

I believe that, and I believe most criminal defense lawyers and probate lawyers believe that--who receive assignments--believes that hard work begets work, that you have to put in the work and time and make the judge know you and become familiar with your work in order to receive assignments and I believe this is the judgment that the judges take when they are appointing assignments. When I started out with my career, I sat on the judges' benches, I approached the judges, I wrote letters to the judges, and I did simple tasks, but I did the best I could at those tasks so that the judges would know that I was trying to make a conscious effort to be a good lawyer. I honed my skills and I think it was in that way that I received assignments and continued to receive assignments.

I am very familiar with most of the new lawyers in particular because I do a lot of criminal defense work. I am very familiar with most of the new lawyers. New lawyers are coming into third circuit criminal division everyday--I see almost a new lawyer everyday--and they're getting assignments and they're getting work.

In particular from a woman's perspective, often times when a woman tries to do criminal work it is quite difficult to compete with men in that particular arena. And often times men first start out very easily can get retained work because for some reason people who are accused of crimes feel more comfortable with men sometimes, but I will say that the judges have been very conscious of that and I think they give women an opportunity to break into a system by appointing them on cases

and giving them assignment and showing the public at large as well as other lawyers and judges that women are just as capable of handling criminal cases and criminal matters and the assignment system certainly helps women in particular because the scales are sort of unbalanced in that respect as far as--I can win a million murder cases and they'll still go to a man after that. I just can't figure it out, yet.

And I'm here to say from a practical perspective that I believe the current system is okay, that I think that judges assign cases based on a lawyer's work, a lawyer's experience, and I'd ask the Court to address the policy that if there is some particular judge where there is some misconduct on that part, deal with individually and approach it in that matter, but I do not believe that the proposed amendment is the answer at this particular point.

JUSTICE MARKMAN: Counsel, I understand the debate over the merits of the proposed rule, and I can understand how reasonable people can disagree on that. I'm a little unclear though in terms of why you think there's an impact upon women lawyers in particular. I mean if went to an entirely different system of appointment tomorrow, I mean it's not as if women lawyers would not be receiving some share of those appointments. I guess I don't know why it would necessarily be less than under the current system.

MS. ISON: I guess I said that initially to say that when I first started out that I did the homework and I sat down and I looked at the cases and I think that the judges--they look at women lawyers in particular to try and get them in. So that it was not based on some contribution or some contributions to campaigns. So I just used that as an aside to show that the system is not a quid pro quo all the time; it is basically trying to get other people to--

JUSTICE MARKMAN: But you're not persuaded that in alternative system that would likely be substituted in place of the current system would be skewed against women--

MS. ISON: No. No, I don't think so.

JUSTICE TAYLOR: What would you think of the system of disclosure we've been discussing?

MS. ISON: I think that would be appropriate. I think--

JUSTICE TAYLOR: --Wouldn't it take care of the sense that there may be--that is a quid pro quo?

MS. ISON: Certainly.

JUSTICE TAYLOR: And you're saying there isn't--and that appears to be the case, but if there is a perception that there may be, why not simply publish the documents?

MS. ISON: Certainly.

JUSTICE TAYLOR: That would put the whole matter to rest?

MS. ISON: I agree--I agree.

JUSTICE KELLY: Do you have any personal knowledge of an attorney receiving an assignment as a direct result of having made a contribution?

MS. ISON: Absolutely not.

JUSTICE KELLY: In the legal community in which you circulate, is there a perception that lawyers are getting assignments because of contributions?

MS. ISON: No, your Honor, not at all. And I say that with great honesty because lawyers come to me--even though I am not even the president anymore of the Recorders Court Bar Association--they come to me--in particular the new lawyers--and it is not based on campaign contributions. They want ideas or you know ways that they can get more work, but it maybe that they need to second chair with some more experienced lawyers. It may be that they need to sit around and sit on that bench and make other observations so that they become better lawyers. I think the judges appoint the cases based on the lawyer's work.

JUSTICE CORRIGAN: Do you receive a huge number of fund-raising invitations during election cycles?

MS. ISON: From everybody, yes.

JUSTICE CORRIGAN: Could you even estimate the amount that you as an attorney would be requested to contribute every fund-raising season?

MS. ISON: No, I'm afraid not.

JUSTICE CORRIGAN: Can you give the Court an estimate of how much you individually might have contributed of your total budget to judicial campaigns?

MS. ISON: I couldn't say, but I would say maybe a thousand dollars.

JUSTICE CORRIGAN: A thousand a year?

MS. ISON: Yes.

JUSTICE CORRIGAN: Do you think--Do you ever discuss with other lawyers the pressures that they feel during fund-raising season?

MS. ISON: Whenever you have to come out of your pocket I think people are complaining period. But it's not--I don't think lawyers have the position that they feel pressured to do it. It's just that time of year. It's almost like Christmas--
(Laughter)

MS. ISON: --you have to spend all this money for gifts and everything and you support the people you want to support. And I might add I have actually made contributions to judges who I have never received an assignment from--never. I have a personal experience with that and it's not just one judge.

JUSTICE CORRIGAN: If there were a suggestion that you would make with regard to fund-raising and the pressure that--I assume that you discuss this with your colleagues in the Recorders Court Bar and they feel some significant pressure to attend judicial fund-raisers as well?

MS. ISON: You know, I can't say that we feel a significant pressure to attend because the criminal defense bar--with the criminal defense bar in particular there is a lot of comradery and actually it gives us an opportunity to get together and not work sometimes to be quite frank with you. So we don't feel a significant pressure to attend these fund-raisers. I think that people support the judges that they think do a good job. There are some judges that I don't make contributions to--to get an assignment or not. But people support the judges they believe are doing a good job and I believe judges do the same with lawyers.

CHIEF JUSTICE WEAVER: Any other questions?
(No response)

CHIEF JUSTICE WEAVER: Ms. Ison, thank you.

MS. ISON: Thank you.

CHIEF JUSTICE WEAVER: Okay. Wyatt Harris?
(No response)

CHIEF JUSTICE WEAVER: Wyatt Harris.
(Inaudible)

CHIEF JUSTICE WEAVER: Stephen Taratuta. I hope I got your name right?

MR. TARATUTA: Pretty close. It's actually Russian, but with the Italian sounding--most people think it is.

I want to thank you for taking our public comments this morning. I couldn't say--

CHIEF JUSTICE WEAVER: Say your name for us.

MR. TARATUTA: Steve Taratuta, P46935.

I can't articulate my position better than Judge Sapala or Ms. Ison has already. I'm asking the Court to reconsider the proposed amendments to Canon 7 mostly as it goes to the administration of justice.

I receive appointments because I'm a competent attorney. I don't receive them because I gave money or not gave money to a judge's campaign committee. I have full faith in the trial bench and their abilities to match a case to a lawyer's abilities to perform those duties that he is responsible for.

I personally am capitalist certified. As Judge Sapala has noted, we have a training session in Wayne County that we have to go through. And in order to receive capital assignments, you have to put in your dues, take the lesser cases, perform those duties adequately, go through the training session and then you will receive the work.

I've been practicing in recorders court almost exclusively since 1992 and I can say I have never felt pressure to give money to a judicial campaign. I still receive the work. I've received work from judges who I've never committed any money to and I have not received work from judges who I have contributed to. So I would echo the comments of Ms. Ison and Judge Sapala and ask you to reconsider making these changes in the rule.

JUSTICE TAYLOR: What would you think about a system of disclosure?

MR. TARATUTA: I have no problem with that. We have that already in Wayne County. Much of the documents that are available through the court administrator was part of Judge Sapala's court order that he put in two years ago and that did require much disclosure and I think that's how--particularly the comments in the staff comments of the proposed change about the undue pressure, maybe some attorneys have given money to judges and they are expecting something in return.

But again as Ms. Ison said, if they've not been there in the courtroom, if they've not shown to the judges they can do the job, that's probably why they're not receiving the appointment. I did lesser cases; for many years all I was doing was violations of probation, helped counsel in 36th district court handling misdemeanor and ordinance violation. I represented over three thousand people in the district court just doing that over a three and four year period, and I worked my way into the circuit court, did violations of probation, the lesser felonies, and like I said now I'm going rapes, murders, and robberies because I'm a competent attorney, not because I've given or not given money. Thank you.

JUSTICE CORRIGAN: Just to follow up on some of your comments, you personally don't feel any pressure to contribute to judges?

MR. TARATUTA: No, ma'am.

JUSTICE CORRIGAN: Are you, or have you ever had any discussions with your colleagues who do have such concerns and feel such pressures?

MR. TARATUTA: Yes. Dawn said this and the Judge said this, there's almost six hundred attorneys that practice in Wayne County that circulate through the court, and I've talked with many of them. I'm the past president of the Recorders Court Bar Association, I'm a member of the representative assembly, and I've never heard any of the comments like that. They come to me asking me how can I get to know the judges better.

JUSTICE CORRIGAN: Comments like what--just so I'm clear?

MR. TARATUTA: Comments like they are receiving undue pressure--do I have to give money to a judge's campaign committee in order to get--

JUSTICE CORRIGAN: --No, I'm not asking that question. I'm talking about the general pressure to contribute to campaigns irrespective of quid pro quo.

MR. TARATUTA: No.

JUSTICE CORRIGAN: Lawyers don't feel that, you've never had those discussions with lawyers?

MR. TARATUTA: They understand that's part of the business; it is. We are professional. We have to support the people we work with. I don't feel any undue pressure to contribute. I contribute to the people who I think would make good judges and justices and that's how I base it and I think that's how these judges base their ability to appoint cases--on my abilities to perform the duties that I need to do.

JUSTICE CORRIGAN: Do you think that the current system that we have is the best of all possible worlds?

MR. TARATUTA: That's a tough question. Yes. In the way that we're handling situations now, I think it is right now because of the fact that the judges can tailor that case to a lawyer's ability. If we go to an administrator, there will be many more names on the list and yes, they may have the proper training but they may not have done a murder case before and the judge doesn't know that and--or the if administrator doesn't know that and the judge would. A judge sees this attorney everyday and knows how he acts, and what he does and what he can do. An administrator, I feel that it would affect the administration of justice negatively in that sense. I think the judge has the best ability and I have full faith in them in exercising those abilities.

CHIEF JUSTICE WEAVER: Just let me take this as an opportunity to clarify something to you and maybe everyone. Just because a proposal is out there doesn't mean that the Court has decided that it wants to adopt or it doesn't want to adopt it. These proposals come to us in many ways and we put on proposals that we think should have public comment. So if there is a presumption that we have adopted this proposal because it's on there, I hope that it's clear.

MR. TARATUTA: I understand that and I've been trying to state that to other attorneys that just because it's out there and they're asking for comments

doesn't necessarily mean the Supreme Court is going to do anything.

CHIEF JUSTICE WEAVER: At this point, I'm going to take the opportunity to say we have other matters on the agenda today 95-20, 99-19, and 98-10 that nobody has appeared to say anything. That doesn't automatically mean we're automatically going to adopt that at all, or it doesn't mean that we would not adopt some (inaudible) say it wouldn't be changed. What we are (inaudible) what is good to see if we can get public comments on them. But this whole presumption that we can't do it because it isn't published--

MR. TARATUTA: I understand.

CHIEF JUSTICE WEAVER: --to get the public comment.

JUSTICE KELLY: And you're doing the right thing in coming and giving us your views as long as you have--background--

MR. TARATUTA: That's why I'm here. The white-knuckle drive up here this morning just so you can know that there are people out there that are interested and want to give their comment.

CHIEF JUSTICE WEAVER: We thank you very much for making that white-knuckle drive.

MR. TARATUTA: Thank you.

CHIEF JUSTICE WEAVER: Okay. (Inaudible)
And James Schlaff?
(No response)

Item 4 MCR 3.216

CHIEF JUSTICE WEAVER: (Inaudible). The Honorable Bruce Newman, probate court of Genesee County.

JUDGE NEWMAN: Good morning Chief Justice Weaver, Justices of the Michigan, my name is Bruce Newman. I'm a probate judge assigned to the family division of the Genesee County Circuit Court. I am here this morning to speak in support of MCR 3.216.

First and foremost, this proposed rule strengthens the role of mediation in

domestic relations matters. I strongly believe that mediation of family cases, especially child custody and parenting time disputes, is a more humane and cost-effective approach to resolving these kinds of issues than trial by trashing. People involved in custody litigation are basically fighting. They are fighting for the most precious possession they have, their children. The ground rules for a traditional trial exacerbates tensions, it puts one parent against the other, it encourages parents to publically humiliate and denigrate each other. That in turn results in rage and furry which undermines whatever is left of the family structure. Ironically, when all is said and done, unlike other civil actions, these parties have to get along in the spirit of cooperation to raise the children. In short, mediation is a kinder and gentler approach to resolving these kinds of issues and especially so for the ever increasing number of pro se litigants.

I believe that the current court rule is seriously flawed in a number of respects. For example, in order for the court to mandate mediation in family matters the court has to make certain findings. One of those findings is that discovery has been completed. In my view that requirement is unnecessary and unduly prolongs the process. For example, in our county once the case is in issue in a divorce, within two months we bring the parties and or counsel into the court. With the assistance of counsel we identify the issues. We try to determine what's the best mechanism for resolving those issues. We start discovery cut-off dates. Technically under the rule, I can't order early mediation until discovery is completed and I have to make such a finding. That means that we have to come back for a second pre-trial and I find that to be unnecessary.

Secondly, a dispute involving custody of minors, the court may not submit a court to mediation until you've complied with MCR 3.210 which means if you're supposed to try and resolve by decision the child custody dispute within 56 days before you can submit it to mediation. That's absurd. First of all, given the dockets, we are never able to get to cases within 56 days and secondly if you resolve it by trial, then there's no need to send it for mediation.

Thirdly, disputes regarding parenting time under the current court rule cannot be referred to mediation. Only lawyers are eligible to participate as mediators. Lawyers do not have a corner on expertise in particularly mediation skills. A lawyer-mediator need not have any specified training or mediation skills in order to qualify under this rule. The mere fact that a lawyer is an experienced domestic relations litigator does not necessarily translate into the mediation skills.

And lastly the rule does not distinguish between evaluative mediation and facilitated mediation.

On the other hand, the new rule as proposed--

CHIEF JUSTICE WEAVER: --Judge, I think your time is about up.

JUDGE NEWMAN: All right. I would just say that the new rule addresses each of those concerns effectively. In my view, it represents a bold new initiative and I urge its adoption.

CHIEF JUSTICE WEAVER: Any questions?
(No response)

CHIEF JUSTICE WEAVER: All right. I think we have--your name got on a different part of the list, but we're very happy to hear from you.

JUDGE NEWMAN: Thank you.

Item 5 99-64 Canon 7

CHIEF JUSTICE WEAVER: The Honorable Kym Worthy. I thought she was here; she is here.

JUDGE WORTHY: Good morning Chief Justice Weaver and all of the Justices of the Michigan Supreme Court. It's my pleasure to be here and I was happy to find a ride because I don't drive in the snow. I am also here to speak in opposition of I guess the new proposed court rule to Canon 7.

I initially had seven points, but after listening to Judge Sapala and some of the other lawyers that have practiced and other interested parties that have spoken, I whittled it down to five. I'm going to do my best not to be repetitive.

I wanted to start off by saying that the Michigan Supreme Court has long in my view subscribed to the policy that indigent defendants deserve to have judges determine who will represent them. I'm going to be very specific too; I'm going to skip the generalities and be very specific. The trial judges are charge with assessing the complexity and seriousness of each case needing assigned counsel. The trial judges are in the best position to determine which lawyers best suit the particular demands of an indigent defendant's case.

Let me just pause here and say that I've never even reviewed the list of lawyers who contribute to the two campaigns that I have had to see how much money, if any, they've given me. Once the campaign is over--and I know all of you know what I'm talking about--although I just want to see it gone, that's it. I don't think about the monies that came in, I don't think about anything else other than the job that I'm charged to do. I do know, however, because I did review the list in preparation for coming here that there are lawyers who did give me $100, $200, some--very few however--$300 and nobody over that amount, that I would never

give an assignment to based on my knowledge of their trial experience.

I think most of you know that I was a prosecutor for over 12 years and I tried over 800 cases when I was a prosecutor. This is my sixth year as a sitting judge in that same court where I was prosecutor. I claim to be an expert on nothing else but the criminal law. I know nothing about anything else, but I do know about the criminal law, and I know how to try a case, I know how to preside over one. Often times you have defendants that are very, very difficult and that need that right blend of lawyer who has the right blend of qualities to be able to represent them. Often times as you know, the defendant may, to the reluctance of the trial judge, go to (inaudible) with his lawyer and you have to rack your brain sometimes to come up with that lawyer who is best equipped to handle that case because paramount, how ever many times I may say I may not like an individual defendant--I certainly don't like what they have alleged to have done--but they have nothing at all to do with whether they deserve zealous, and quality, and competent representation--nothing at all to do with that. My personal feelings are set aside when I walk in that door in my courtroom and put on that black robe.

Now, I say that because there was a question here asked about well, wouldn't the whole problem of this proposed rule be taken away if we, for example, should appoint a court administrator or staff to do those things. And let me tell you the many reasons--I'm going to cut it down--but some reasons why that would be totally inappropriate. Assigning cases is very stressful and very difficult and something that trial judges take very, very seriously, perhaps more seriously than they take anything else. It is imperative that we continue the practice of letting the judges who know the lawyer or the group of lawyers that come before them and be able to match them with this case.

Now, I was last on assignments in October and let me also say this when--I guess it was two years ago and maybe Judge Sapala can give you the exact date--where there were changes--vast changes made to the assignment system. Why correct the appearance of any impropriety because we all know appearance or perception is reality to some people, but we ought not let those perceptions drive and change what we know is right.

In Wayne County, for example, I can now only assign one lawyer eight cases is the max. I don't think I've ever even gotten to the eight points, but I can only go eight cases. I'm on assignments probably every 13 to 14 months and this proposal flies in the face and tells me on the record that I'm going to let someone's $100 to $300 who I give the case to.

Also in Wayne County--I don't know about other counties; I'm speaking about Wayne County because that's where I work, preside and practice and live--that if we should assign a case to a particular lawyer, there is no chance or one-thirtieth of a chance that that lawyer is even going to appear before me on that case. Our

system is a blind draw system and when you assign a case to a particular lawyer unless it's a spot assignment--supposing that some one didn't show up for trial or you need some one immediately to try a case that's before you, that's a different story. But the computer picks who that judge is going to be. I think it's important to point that out because I know there was a problem in another county recently or in the past--I think it's been corrected--where if a judge made an assignment and that lawyer practices before them, argot the perception that the judge is only appointing lawyers that would move that judges docket along.

CHIEF JUSTICE WEAVER: Judge Worthy, I've given you a real long three minutes already.

JUDGE NEWMAN: Okay.

CHIEF JUSTICE WEAVER: Okay.

JUDGE NEWMAN: I'll wrap it up then.

So let me also just move on to say also that Canon 7 I think deals with this perception already, this perceived problem already. Canon 7, as you know, says, in relevant part in (B)(2)(a) "A judge should not personally solicit or accept campaign funds, or solicit publically stated support by improper use of the judicial office in violation of B(1)(c)." The Michigan Rules of Professional Conduct 8.3(b) say, "A lawyer having knowledge that a judge has committed a significant violation of the Code of Judicial Conduct that raises a substantial question as to the judge's honesty, trustworthiness or fitness for office shall inform [immediately] the Judicial Tenure Commission." Everyone has already said if it ain't broke, don't fix it.

But I just wanted to address one last thing if I'm able to do so, specifically to Justice Corrigan's questions about the administrator. Judges and lawyers of the court are bound by the judicial canons and the professional rules of conduct. If we should appoint an administrator to do those kinds of job, who watches the administrator and who polices them?

JUSTICE CORRIGAN: Let me--may I ask you--

CHIEF JUSTICE WEAVER: (Inaudible)

JUSTICE CORRIGAN: All right. And here's my question about that, in that for more--or 20 years now on the appellate side, same judges same Defendants, new courts, we've had an administrative system of appointments. The same pressures are outstanding--you've got that complicated case, the right

defendant whatever and no judge is involved in the appellate appointments. Where do you stand on that?

JUDGE WORTHY: We discussed that very issue yesterday at our bench meeting and the overwhelming response was that that system was a failure.

(Laughter)

JUDGE WORTHY: And also I discussed it with several lawyers as well.

JUSTICE CORRIGAN: I happen to agree with you and I want to make it quite clear that at this point I'm thinking about this. I haven't reached any conclusion, but we have--as I say--for 20 years been so concerned about the appellate assignment process and the appearance problem, that this Court endorsed a system where the judges are totally out of it.

JUDGE WORTHY: Let me say then with that in knowledge (inaudible) complete and utter failure. Judge Crockett who I think everybody knows and respects made an excellent point also on that very issue and he says it's important for people to realize that there's a vast difference between appointing a lawyer for a trial than appointing a lawyer for an appellate matter. Concededly if you graduate from law school you should be able to write--be able to issue spot and write a comprehensive brief hopefully. But when it comes to trial skills, you have to do it. A lot of lawyers have not actually gone to a courtroom and smelled (inaudible) and heard the roar of the crowd. Be right in there, doing it everyday, that's the only way you can do it effectively.

I can tell you that--and this is a general issue that maybe you'll see one day--I have sua sponte on my own motion stopped a trial in the middle of it because a lawyer was so bad that I felt it was very, very disastrous to a person that they were representing. It hasn't come up on appeal because of a new case, but than man was acquitted--I was hoping that maybe that would be an issue. But we take it seriously.

I wrote a letter--I was so concerned about this issue before I knew this rule was going to be changed, I wrote a letter to all the bar associations that practice--that are connected with Wayne County and all the lawyers that practice in our state and I said this, "When I was last on assignments I had received in excess of 75 cards from lawyers I had never heard of"--In our court, Justice Weaver there is--and the other Justices--I know that Justice Corrigan is familiar with this--we have a system where when the judge is on assignments the lawyer has to go to the ninth floor and drop a card in to let the judge know that they're interested in receiving assignments and we draw from that pool. We get many, many cards. My concern was that I was not appointing enough work to the new orders because I had never heard of most of

these people. And so I wrote a long three page single spaced letters to all the lawyers and I said--and I'll sit down--I said, "I have received in excess of 75 cards from lawyers I have never heard of. I would not assign cases to lawyers that I know nothing about. A number of the newer lawyers have stopped in to introduce themselves on occasion"-- but I don't allow them to do this--let me just say (inaudible)--during the two weeks that I'm on assignment because I think an appearance in that period of time would be wrong-- "or have written me a short note to introduce themselves, sometimes enclosing their resume. I hardly endorse these ideas. I take the business of assigning cases very seriously and I will only assign cases to lawyers who are qualified to do them. I will gladly, and do assign cases to lawyers that are just starting out as long as I know something about them. It takes just a little time and initiative to look and see who is coming up on the assignment rotation and to drop that judge a line prior to the beginning of rotation to let them know who you are and that you're competent to handle a certain number of cases.

I thank you for allowing me to go over my time, there was more I wanted to say, if you have any further questions, I'd be happy to answer them.

CHIEF JUSTICE WEAVER: All right. Any further questions for Judge Worthy?

(No response)

CHIEF JUSTICE WEAVER: We're real glad that you were able to catch a ride.

JUDGE WORTHY: Thank you.

CHIEF JUSTICE WEAVER: Okay. Thank you, Judge.

John Mayer?

MR. MAYER: Chief Justice Weaver, Justices of the Supreme Court, for the record I am John Mayer a freelance management consultant in the justice environment. However, today I appear not on behalf of any client, but to speak in opposition to the proposed amendment to the Code of Judicial Conduct, Canon 7, a matter which has been of professional and personal concern to me for parts of four decades.

Before my 20 years with the federal court, from which I retired last year, I served the state courts in Michigan and Ohio for 13 years. Among other things that you may not know about me is that I am the answer to the trivia question who was Fred Nester's (phonetic) predecessor in Oakland Circuit as court administrator.

I acknowledge that Oakland Circuit has taken steps to deal with problems

inherent in their system. Chief Judge Sapala has exercised real leadership in his court, but I suggest to you if I may borrow a medical metaphor from Judge Sapala that all of those efforts and the amendment that's pending before this Court today only treat symptoms, they don't treat the disease.

The problem is not whether the system is factually corrupt so that a judge--a jury might convict the judge of the crime. The problem is not whether this judge or another judge may be given sweetheart deals to defendants represented by their contributors, the problem is the appearance of impropriety. And in matters of public importance, appearances are as important as facts.

The system as it exists today in some places in Michigan has the appearance of impropriety and this amendment does not really address that problem. I suggest that you direct your attention and your rule making authority to the way lawyers are selected to represent indigent criminal defendants. The system I am most familiar with in recent years is that of federal defender office in Detroit and that under the Criminal Justice Act the staff attorneys for that office are assigned to represent the first defendant in every case, but there are many multiple-defendant cases and it is in those cases that Criminal Justice Act attorneys are appointed. Attorneys apply to serve on the Criminal Justice Act panel. They are screened by a committee of lawyers representing several bar associations. Many attorneys who apply do not pass the first round of screening by these lawyers. When the committee has completed its screening process, a proposed list of approved attorneys is forwarded to the court. An attorney who is on the list can be vetoed by a judge, an attorney who did not pass the first round of screening may get a second chance on the recommendation of a judge, but the key is that the judges themselves do not pick the attorneys to represent defendants in cases in their courtrooms. But a Criminal Justice Act attorney is required, the defenders office makes the assignment in rotation right off the top of the list. Only very recently has that office undertaken a two-tiered system because of the enactment by Congress of death penalty legislation. It has been assumed--prior to that, it has been assumed that any attorney on the CJA panel can handle any federal criminal case up to a death penalty case.

It should also be noted that approval to be on the CJA panel is not a life time appointment. All attorneys on the panel have to reapply and go through the screening process every three years. Some attorneys are excused from further service each time. It is also possible for an attorney to be excused from the panel before the three years has past--have passed.

I urge you to look at this system and other ways of avoiding the appearance the judges are choosing the attorneys who appear before them. Then I urge you to address your rule making authority to this problem which I and many others believe is the real problem.

Chief Federal Defender, Miriam Siefer, in Detroit has authorized me to say

that she would be glad to speak to anyone who wanted more detailed information on this procedure. Thank you.

JUSTICE KELLY: Let me ask you a question. It's good to see you again, Mr. Mayer. I am glad to see--

MR. MAYER: Justice Kelly.

JUSTICE KELLY: --there is life after a career in the federal system--

MR. MAYER: Thank you.

JUSTICE KELLY: I don't mean to be--quibble with you, but if for example, we had a matter before us in which it was shown that a judge had made 50 assignments to a given lawyer in a period of two years and received $10,000 as a campaign contributions in his last campaign from that attorney, I would call that an appearance of an impropriety.

MR. MAYER: I would agree.

JUSTICE KELLY: Not necessarily impropriety, it would have to be shown in order for it to be improper that there was a quid pro quo there some actual relation, but an appearance, right?

MR. MAYER: Absolutely.

JUSTICE KELLY: But to say that because it could be that some lawyers in this state make contributions to judges and receive court appointments in turn is an appearance of impropriety is less convincing to me. I wonder if that might not simply be a possibility rather than actual appearance. Yet, I don't wish to quibble, but do you see my distinction?

MR. MAYER: Oh, I do. Well, I go back to what I said before. I think that in matters of this public importance appearances, even though they may be based on speculation, are very important and have to be--have to be paid attention to.

JUSTICE KELLY: But in equal measure regardless of the (inaudible) of responsibility or the lack of showing of any direct problem?

MR. MAYER: If--and this goes back to something several of the other speakers have said--I believe Ms. Costello among others--if it can be shown by whatever sampling or public opinion method that this view is likely held that--as I believe by the way--as I believe it is--then I would say yes. I can't prove it to you right this minute.

Perhaps because of the nature of my jobs in the past, I have socialized mainly with nonlawyers--lots of university faculty people, other people in the community. These are people who--you know, read the New York Times and listen to NPR and a few other things, and I will tell you that to a person they would agree that there is the appearance that there is--to use the word that was used here in the court--the potential appearance of impropriety in the present system.

CHIEF JUSTICE WEAVER: Further questions?

JUSTICE TAYLOR: Sir, do you think a system of disclosure would assist in alleviating this so that the press, for example, can look and see--Justice Kelly's hypothetical--if a person got 50 appointments and contributed $10,000 and writes a story about, and so on, does that specter of that disclosure and all of apply to political circuits would have a beneficial effect?

MR. MAYER: Absolutely, Justice Taylor, it goes to Justice Kelly's example. If that report, for instance, were on the Supreme Court's website and the press and others were able to access it whenever they needed it I guarantee you that the following year that attorney would not have received all of those assignments from--would not receive all of those assignments from the judge you described. There would be peer pressure among the judges, there would be other kinds of healthy pressures brought to bear to see that that sort of thing doesn't happen again.

JUSTICE CORRIGAN: Mr. Mayer, just so I understand your point, your opposition to this canon results from your belief that this amendment does not go far enough?

MR. MAYER: Exactly, Justice Corrigan.

JUSTICE MARKMAN: Mr. Mayer, I'm not sure I completely understand that. This proposed amendment simply prohibits one kind of relationship between the bar and the bench. As I understand it, it doesn't prescribe an alternative system. When you say it doesn't far enough, you mean it doesn't go far enough because it doesn't prescribe--affirmatively prescribe what you think would be the best system?

MR. MAYER: That's correct, Justice Markman. This amendment won't do any harm, but it doesn't go any where near far enough and I would join Judge Sapala--Chief Judge Sapala in offering my service in any sort of task force or group that might be afforded to look into this matter in the future.

JUSTICE MARKMAN: So again, from your perspective, there is nothing wrong with this amendment, it just is not very effective in dealing with the underlying problem.

MR. MAYER: Yes, sir.

JUSTICE CORRIGAN: Just so I can understand on the federal system where you have a great deal of experience, the federal judges are not elected, they're appointed.

MR. MAYER: That's true, Justice.

JUSTICE CORRIGAN: And yet the system that existed over there doesn't even let a federal judge make an appointment.

MR. MAYER: That's correct.

JUSTICE CORRIGAN: What's the rational for that? What's the problem if a federal judge makes a direct appointment?

MR. MAYER: Well, as you know, going back to the very careful attention that was paid to the blind draw assignment of cases which of course exists in--I guess most state courts these days--the randomness of all of these factors is deemed to be of very high value. Judge shopping is to be avoided at virtually all costs and attorney shopping is by the same means. It isn't in fact a blind draw system, but by the assignment system that the federal defender office uses is off the top--whoever's name has worked his or her way to the top of the list will get the next the assignment period.

JUSTICE CORRIGAN: Thank you.

JUSTICE MARKMAN: Mr. Mayer, I take it you've sat here most of the morning and heard much of the testimony, is that correct?

MR. MAYER: Yes, sir, the whole morning.

JUSTICE MARKMAN: Most of the testimony of the bench and bar has been towards the conclusion that the current system not only involves no actual quid pro quos or improprieties, but that there's really no evidence that there's even much of a sense in the community, at least the legal community, that there's an appearance problem. What is your reaction to this testimony? Where do you and they part company at the most fundamental level?

MR. MAYER: With respect, Justice Markman, there's a whole community there outside the legal community and I gave the somewhat personalized example of the people that I socialize with who are well-informed people, who are not lawyers, as being a nonscientific sample of what I believe a scientific sampling would show and that is there are a lot of people out there who believe that the system has the appearance of impropriety. I believe a formal survey would show that.

JUSTICE MARKMAN: The general tenor of the testimony this morning, however is that in the real world, this is a system that operates, that works, that achieves the goals that it's set about to achieve. I mean shouldn't we act quite carefully before we change systems that appear roughly to be achieving the ends that they were erected to achieve?

MR. MAYER: Again, with respect Justice Markman, you're characterizing the legal world as the real world. I'm talking about this world.

(Laughter)

CHIEF JUSTICE WEAVER: Any further questions?

(No response)

CHIEF JUSTICE WEAVER: Thank you.

MR. MAYER: Thank you.

CHIEF JUSTICE WEAVER: I do want to recognize that Justice Robert Young has joined us. We're glad you found your way in. (Inaudible)

We are proceeding then with Douglas Mulkoff.

MR. MULKHOFF: Chief Justice Weaver, fellow justices, thank you for giving me the opportunity to speak to you. I am the current president of the

Criminal Defense Attorneys of Michigan, an association--a voluntary association of lawyers. We have a--we're dedicated to building and educating a zealous bar of criminal defense practitioners. We promote and provide education for attorneys and this is--this is essentially our function.

We strongly disagree with the proposal that is made to amendment--as amended to Canon 7. This is something that I have not testified before this committee. I have not given testimony. I know Justice Corrigan made reference with my name in connection with this. It seems--

JUSTICE CORRIGAN: --I apologize. I think you had made public statements.

MR. MULKHOFF: I made--I wrote a letter in August of 1999 to this Court suggesting in the context of reform to campaign finance laws in Canon 7 that this Court ought to take a look at the better practice throughout the state of--requiring appointment of counsel to be handled by administrators following a protocol pointing out the--what I thought many people saw as an impropriety or a potential appearance of an impropriety as described in newspaper articles over the past several years and reported publically. This proposal does not address the problem in a way that makes sense to our organization. We believe that it replaces it with a bigger problem and the bigger problem that this amendment to Canon 7 causes is essentially disenfranchising a certain segment of the lawyer community from participation and support of judges. We as criminal defense practitioners know a lot about certain courts and judges and we have input to give the citizens, we have insights to share, and we, like other full-fledged members of society, should be able to donate to campaigns in a way that is no different than any other citizen or any other lawyer.

Essentially, the Court's proposal would put criminal defense attorneys in a position of deciding that if they wished to take part in the electoral process through financial support of campaigns of judges who they believe have competence then they will need as a prerequisite to surrender that portion of their practice which is to a service of the community as court appointed counsel.

Attorneys who take assigned work should not have to surrender their right to support candidates who they trust and admire. You would be creating a subclass in cutting attorneys out of the political system and this is--this is not appropriate or fair and I wonder about the constitutional implications of making such a division.

CHIEF JUSTICE WEAVER: Mr. Mulkhoff, you have three minutes--elongated already.

MR. MULKHOFF: If I could wrap up--We brought to the Court's attention what we thought was a better practice and that is using an administrator and a certainly protocol. This is done in Macomb County with great success, in Washtenaw County. Justices Corrigan and Markman, who have worked in the federal system understand how that system has worked very well where judges are one step removed from the process. This is the preferred system.

I think that there are problems. This Canon or proposal for amendment does not appropriately address the problem.

I do note that this is not a problem unique to Michigan. Last Saturday's New York Times editorial pointed out that the Chief Justice of the New York Supreme Court has created a new panel to propose long range improvements in the fiduciary appointment process in courts. Maybe that's a good idea; maybe that's something that this Court should be doing. But the proposal to Canon 7 I think is not the solution.

CHIEF JUSTICE WEAVER: Thank you. Any further questions?

JUSTICE CORRIGAN: Mr. Mulkhoff, when you wrote to the Court previously, were you writing on behalf of CDAM--

MR. MULKHOFF: Yes, I was.

JUSTICE CORRIGAN: --or were you writing on behalf of the yourself?

MR. MULKHOFF: I was writing on behalf of CDAM. And it has been our position--our organization's position for probably a dozen years that there should be some insulation between the process of--between judges and the attorneys who receive appointments.

JUSTICE CORRIGAN: I presume you just listened Judge Worthy testify so strongly here that that system would be an abject failure.

MR. MULKHOFF: Well, I have--

JUSTICE CORRIGAN: --That that system as it existed in appellate system of appointments had been an abject failure. What's your response to her thoughts?

MR. MULKHOFF: My response to her thoughts would be to direct her

to Mr. Mayer's comments. Approximately 50 percent of my practice is doing court assigned work in federal court. I'm fully aware of how that system has succeeded. I have also served on the oversight panel committee--a screening committee that Mr. Mayer described--to determine competence of attorneys who will serve as federal court appointed counsel and that system works quite well. I don't believe that it has flaws. I think that it is the way to go and I would urge the Court to--to take a close look at what Mr. Mayer has proposed.

CHIEF JUSTICE WEAVER: Other questions?

JUSTICE YOUNG: Mr. Mulkhoff, it was actually your letter that brought this issue first to my attention. The issue of at least the appearance of a quid pro quo--contributions for appointments, as I recall--I don't have my file in front of me--was a July letter. You made reference to an August letter?

MR. MULKHOFF: It was August 2nd, 1999; I have the letter.

JUSTICE YOUNG: Let me make sure I understand the gist of your statement there. Do you agree that there needs to be a disassociation at least in order to avoid the appearance of impropriety between the appointment process and the political process for judicial elections?

MR. MULKHOFF: I think that there's two good reasons to do it--

JUSTICE YOUNG: --First of all, do you agree that that's--

MR. MULKHOFF: --I think that's one of two good important reasons.

JUSTICE YOUNG: Okay. Well, go ahead now and explain—

MR. MULKHOFF: --The other reason I think it's important to have some insulation like the federal system has, is that there is a potential appearance that a lawyer appointed by a judge will be beholden to that Judge to represent his clients in a way that pleases the judge which may not always be zealous advocacy. And the insulation such as this federal system has is a protection. So that is the second reason to avoid the appearance that a lawyer may become--beholden to a particular judge.

JUSTICE YOUNG: Are you aware--I have not yet seen--I've just be made aware that the ABA has two related proposals to change its model--

MR. MULKHOFF: I haven't read that.

JUSTICE YOUNG: --standards and the judicial standards--canons. They're called pay to play. The one that pertains to the professional code precludes an attorney from--I have heard that one--does preclude and attorney who contributes or solicits for a judge in accepting an appointment, are you aware of that?

MR. MULKHOFF: I can't count on it.

JUSTICE YOUNG: I'm not aware--I've just been made aware that there is a change to the proposed model of judicial canons which similarly precludes that kind of--precludes a judge from making appointments for those who participate in his political campaign. What--if those are actual descriptions of what the ABA is proposing, what contemplation do you think this Court should give to that national reaction to problems you have described?

MR. MULKHOFF: Well, with this--My opinion about the problem of this perception issue goes far beyond criminal appointments. In fact, all of the judges in this state who are elected receive contributions from one place or another and on one level or another all are susceptible to appearance of impropriety allegations. I think that--I heard there's a system in California where a blind trust arrangement is made where someone can financially support a judge, contribute to that judge specifically and the judge like Ms. Worthy's practice, would not know who has contributed to the campaign. Now that's a way--

JUSTICE YOUNG: --The problem is that our state law requires that a judicial candidate serve by affidavit that all of the contributions and expenditures are accurate. So as a matter of our state law, a judicial candidate at least has to verify that all of the contributions listed are accurate.

MR. MULKHOFF: Your comment makes me think that we could not start doing this tomorrow.

(Laughter)

MR. MULKHOFF: But it does seem like an answer to the bigger problem which is all judges--

JUSTICE TAYLOR: --I think the problem is the blind trust where they (inaudible) virtually zero money.

MR. MULKHOFF: I don't know what that comment speaks to.

JUSTICE YOUNG: It speaks to incumbent protection I think.

JUSTICE TAYLOR: Well, I mean the blind trust idea is good, it just doesn't raise any money I think.

MR. MULKHOFF: Well, it--

JUSTICE TAYLOR: --It suggests that people want the candidate to know who's giving.

MR. MULKHOFF: It wouldn't stop me from supporting the candidates who I contribute to and I would like to think that the majority of our bar would have a similar view.

JUSTICE YOUNG: The essence of your statement, as I understand, is not that this isn't an issue worthy of this Court's consideration, you think that this proposal is wrongheaded and that the right solution is to ensure that the selection system is taken out of the hands directly of the judges, is that correct?

MR. MULKHOFF: That was the gist of the letter that we wrote to you and we continue and reiterate that position, yes, exactly.

JUSTICE CORRIGAN: Mr. Mulkhoff, one final question in terms of decision making in your organization, how large is it?

MR. MULKHOFF: Three hundred members roughly.

JUSTICE CORRIGAN: Three hundred members and what process is used to arrive at a determination like this, is the membership surveyed or how does that work?

MR. MULKHOFF: We have a board of directors of approximately 18 people represented regionally with the state divided into sections. The support for our belief and proposal that we've had for maybe a dozen years that there should be an independent administration of appointment counsel--this has been a long held view supported by our board. Our position in opposition to the amendments to Canon 7 is supported by our board--by our executive board this week.

JUSTICE CORRIGAN: Is the Recorders Court Bar Association then represented in any way on your board or how does that work?

MR. MULKHOFF: They are an independent organization who have overlapping membership with our group. Some of the attorneys are in both.

CHIEF JUSTICE WEAVER: Any further questions.
(No response)

CHIEF JUSTICE WEAVER: Thank you.

MR. MULKHOFF: Thank you.

CHIEF JUSTICE WEAVER: We have four more speakers and so I would like everyone to know that we need to wrap up by noon at the latest. So I will ask the speakers if you're going to have Fran (inaudible) Genesee Bar Association to really stay within your three minutes if you would, and I'll remind the justices that (inaudible).

UNIDENTIFIED FEMALE: Good afternoon, your Honor, and I believe I can state this in less than three minutes, on behalf of Genesee County Bar Association we thank you for selecting Flint as one of your sites to have this hearing and we appreciate the fact that you all have appeared.

I will briefly say that the Bar Association at an earlier time sent the Court a letter in support of mandatory continuing legal education and I just wanted to reiterate that today. There was the thought that the bar association and lawyers in this county wished to go on record in support of continuing legal education. There are some concerns that in the procedures that are developed that attorneys who are working a particular area of practice, for example, criminal law, not being required to take a course in anti-trust regulation--that sort of thing. There's also a consensus, (inaudible) that all attorneys should have some amount of training in ethics as part of continuing legal education.

And I believe I've taken less than three minutes. I will tell you that we have over 700 attorneys in this county and over 650 of them are members of the bar association. Thank you very much. Are there any questions.

JUSTICE YOUNG: Does your local bar require continuing education?

UNIDENTIFIED FEMALE: We do not require it, but we provide many

seminars locally because ICLE does not come to Flint any more and in fact if mandatory continuing legal education is adopted we certainly support the motion that other entities besides ICLE are authorized to provide education. Although, ICLE education is wonderful, it is sometimes difficult for attorneys here and north of here to travel. Therefore, we would provide or we would put on a seminars, although we do that frequently now ourselves ,and invite Saginaw, Shiawassee, Lapeer, and points further north.

JUSTICE YOUNG: I'm trying to figure out, do you support the very proposal before the Court now?

UNIDENTIFIED FEMALE: The board did support that proposal. The board does have some concerns about the--about the implementation, but the board did want to go on record as supporting the proposal and they did not recommend any language changes.

CHIEF JUSTICE WEAVER: Further questions?
(No response)

CHIEF JUSTICE WEAVER: Thank you.

UNIDENTIFIED FEMALE: Thank you.

CHIEF JUSTICE WEAVER: --sharing with us.
Judge Duncan Beagle and he is of course from the Genesee County Circuit Court.

JUDGE BEAGLE: Good morning Chief Justice Weaver and the other Justices of the Michigan Supreme Court. My name is Duncan Beagle. I'm one of our circuit judges here in Genesee County and I was the first judge to volunteer for the family court division which my father at eighty-six years of age thought that I should have been referred to the forensic center for evaluation.
(Laughter)

JUDGE BEAGLE: But that's another issue. But in all seriousness on behalf of the judges we want to thank you for coming to Flint and making this one of your visits.
I just have one short observation. I'll be quick and to the point. I'm an individual that has a great love for the law. Both my father and grandfather practiced law for over fifty years in this community and I, even though the legal

profession and often the judiciary takes a few hits in the news media here recently, I find myself being one of the defenders of our process and the integrity of our process and all the rest of it.

I have confidence in every one of you because I think that any good judge and a lawyers certainly is aware of the background of each of you, and why we may often disagree we have enough confidence in you that you can judge your cases based on the law and facts of the individual case.

I felt strongly--I remember my first year in law school I went back one time and said to my dad, I said I don't understand why we select our judges at political conventions and being a man of a lot of experience said well, that's the way it's always been and it's worked pretty well. I said okay, that's good enough for me.

But in all seriousness, I think over the last several years, the amount of money that's gone into a lot of the judicial campaigns has bothered me personally. And as I've talked to some of my friends and colleagues both within and outside the profession, I'm concerned about it. I know many of you have certainly had a chance to reflect, and I know the comments today on different issues have had to deal with that quote, "perception of impropriety." There was a reason US New & World Report that any many of you may have read--I think there were two US Supreme Court justices--I think Breyer and Kennedy had made comments that they were concerned about a trend they are seeing not only perhaps in this state, but across the country in the amount of money that's coming into campaigns at the state level.

I want to be able to go out and defend the intregrity of our court system and quite frankly when I go out and talk to my friends outside the legal system, my neighbors and service (inaudible) and so forth, sometimes it gets difficult when they see the amount of money that's being thrown into these campaigns. And I think recent studies done in Texas and Pennsylvania by both the bar association and the supreme court indicate there could be as many as 70 percent of the people are concerned that money may have some influence in the decisions that are being rendered.

Now, I'm not here to advocate any particular position and I'm not here to advocate from the left to the right; I'm here as a well--a person who loves the law and I'm concerned about a perception I see within our community throughout the state of Michigan. I don't come here with any answers to the issue. I just think it's something that needs to be looked at very seriously, not only by you folks, but perhaps people within the bar association, maybe the general public. I know you're retiring former colleague Justice Brickley had some strong opinions on the issues and I'm not here to say that his ideas are right or wrong. I'm just saying I think it needs a serious look and that was my only reason for coming because I feel strongly about the issue and I want to be able to go out and defend the integrity of the system, even though I may occasionally disagree or agree with my colleagues.

And I think you all know where I'm coming from, it's just one thought from one particular judge here in good ol' Flint, Michigan, but I do hope you'll reflect on my thoughts and perhaps give it some consideration.

JUSTICE YOUNG: Thank you, Judge. Well, if you come up with a solution, I'd be interested in hearing.

JUDGE BEAGLE: Well, I'm not sure I know what the solution is, but I think there's a better one than the system we're going through right now with the amount of money being reported.

CHIEF JUSTICE WEAVER: Judge Beagle, let me comment to you that I have plead that there's attention to the issue now, but it really isn't new as you brought up Justice Brickley was concerned about it. Certainly in my own campaign, I had $180,000 as did one of the other candidates and there were candidates that had close to $600,000 and $400,000 (inaudible) and it was 1994 so that was a lot of money then. It's just now there's more money.

You might be interested to know the State Bar is having a session over in Lansing on Friday morning. They brought in an expert from somewhere who is going to talk about selection and how we chose judges. I hope to be there. It might be interesting in that certainly something we're always thinking about.

JUDGE BEAGLE: Thank you.

CHIEF JUSTICE WEAVER: Thank you.

JUDGE BEAGLE: Thank you for coming to Flint.

CHIEF JUSTICE WEAVER: Yes, thank you, Judge Beagle.
Now, Mr. Gilbert Engels.

MR.ENGELS: Thank you Justice Weaver and other Justices of the Court that you'll hear the petition of a man who is a high school graduate, father of five children, eight grandchildren, and now one great-grandson. I've been married to the same lady in September for 50 years.

I come before you not so much in the criminal aspect of these appointments and contributions to the potential judiciary members or members of the judiciary; I come here as a person who has witnesses such mischief in the probate court where the appointments are somewhat minimal.

One of the judges here today couldn't give you a number on campaign

contributions. Judge Freddie Burton for the 1994 election had $135,000 in that fund. Over 90 percent of it was given by members of the bar that practiced in front of him. Judge Milton Mack, had seventy-some thousand dollars. Again, the same ratio of members of the bar that practiced before them.

I have a letter that I addressed to Judge Callahan, Wayne County Circuit Court when he wrote an editorial for the Detroit Legal News. It was dated August the 7th, 1997. I responded on the 17th of that month and I wish to thank him for his statement in paragraph two of that article, "donations from lawyers to judges should be outlawed."

I was in contact with Attorney Markman, chief counsel for Ford Motor Company, when the American Bar Association had petitioned him to come to some kind of a recommendation for this pay to play--I believe the article in the paper described it. What we're seeing here is a justification of jurisprudence to be for sale.

I feel like David standing in front of the Goliath with all the members of the bar that I see in front of me and those that are behind me. I say this with great solitude, the system is corrupt to its very core. Dorothy Comstock Riley, who you all know, when she left the Bar said it should be torn down to its foundation and rebuilt again. I affirm that.

I saw in the paper on Tuesday an article written by David Oshtenfelder (phonetic) Court Plans Hurt Funds to Judges; the Court questions a system of ethics. The appearance of impropriety has such a preponderance. We look at Macomb there a judge--female--is having an affair with a man that is now residing in one of the county court--prisons charged with first degree murder of his wife. The sheriff of Macomb County has been indicted for rape. Judge Candido has been charged with five women who were defendants in his court in Macomb County when he was soliciting illicit, immoral acts or perpetrating them. Judge Sapala comes here and he was preceded by another judge that was chief judge, Richard C. Kaufman, pulled over and charged with consuming smoking cannabis--marijuana--with others and it was covered up. He resigned as chief judge and after nine months left the bench.

We talk about jurisprudence, we talk about governments and the confidence that the citizens have it in--it is diminishing so quickly that it will surely go into a negative category.

Now, why am I here? I've given you my background of what and who I am. In 1995 in December--about the 12th, I filed a Title 42 action, a RICO action in federal court. The defendants in that case were Mary McDonald; Mark Thomas; Thomas & Bender, the law firm; Louis Wexler (phonetic), attorney; Milton Mack, presently chief judge probate court; Freddie Burton; the court itself and a re-election campaign committee of the two then living judges--Judge Joseph Frank had passed away--Milton Mack and Freddie Burton. I charged them with a RICO action.

They all were practicing law and administering it in Wayne County. I charged them with conspiring together to operate a racketeering enterprise.

CHIEF JUSTICE WEAVER: Mr. Engels?

MR.ENGELS: Yes, ma'am.

CHIEF JUSTICE WEAVER: I don't mean to embarrass you, but I've given you quite a long three minutes already.

MR.ENGELS: All right.

CHIEF JUSTICE WEAVER: I hope you can--

MR.ENGELS: --All right. I will take--all the records are available. This case went to the federal court where there was perjury in the district court in front of Patrick Duggan, he subordinated the perjury. Louis Wexler made the perjury. The FBI got it. They told me they didn't have jurisdiction of perjury in a federal courthouse. The Sixth Circuit in Cincinnati did not rule on the bank fraud or the real estate fraud that occurred by the probate court officer, only addressed the fact that they were immune. In other words, bank fraud and real estate fraud is a condoned practice in Wayne County Probate Court and maybe in others.

Now, I think Judge Sapala is still here. I would lay this before the Court. I have before me a document here State of Michigan, Department of State from Candice Miller. It is dated the 29th of May of 1999. "The search of our records do not reveal an oath of office form filed by Judge Michael F. Sapala."

CHIEF JUSTICE WEAVER: What we need from you, Mr. Engels, is we can't go into specific cases.

MR.ENGELS: I know.

CHIEF JUSTICE WEAVER: This is an administrative hearing for comments on administrative issued. I understand there is somewhat of a mix in what you're trying to say. I've tried to give you sufficient time, but you do need to limit yourself and your three minutes are up. So if you want to--

MR.ENGELS: May I address one more thing?

CHIEF JUSTICE WEAVER: Yes, would you please wrap it up?

MR.ENGELS: This file is a (inaudible) of report from John Chase in regards to guardian ad litem of Wayne County. A for-profit corporation of which a member of the Michigan bar, Douglas--Doug Elert (phonetic) is going to serve thirty years and three months in prison and I understand a half a million dollar fine; a Patricia Norton (phonetic) the same. This report shows 407 people plundered--destroyed by the very people that swore an oath to protect the citizens. This thing will make any person with any kind of compassion whatsoever cry to read what was done to these elderly people. Millions were commingled and stolen. It is a disgrace that anyone says that I am an attorney and doesn't cry out when they see this--448 pages so documented by John Chase that it is remarkable.

I am telling you that the citizens' confidence in jurisprudence is going to zero if we don't correct it--if you don't correct it. This responsibility lays with you to turn around and correct this system. It is polluted from one end to the other. All the beautiful sayings up here and eloquent statements by people in all part of the system that's for sale. It's a disaster. I thank you very much for your time.

CHIEF JUSTICE WEAVER: Thank you for sharing.

MR.ENGELS: Any questions.

CHIEF JUSTICE WEAVER: Any questions?
(No response)

CHIEF JUSTICE WEAVER: All right. Thank you very much for coming.

MR.ENGELS: Thank you.

CHIEF JUSTICE WEAVER: All right. And our final speaker is the Genesee County Chief Judge, Judge Robert Ransom.

JUDGE RANSOM: Hello, Justice Weaver, fellow Justices, I'm Robert Ransom, the chief judge of the Genesee County Circuit Court and chief of our Genesee County Judicial Council. I want to thank you for your willingness to bring the Court to our communities.

Genesee County is proud of the accomplishments that we have made in the area of court reorganization and I'm enthused about the opportunity today to--to give you an outline--presentation if you will--of what we have accomplished in the areas of court reorganization and where we're going with court reorganization in Genesee

County.

And there is a lot of technical assistance that goes with what I'm about to present to you and I'm going to ask for the help of our technicians here now to do that. And in order to facilitate this we have a screen that's right above you heads.

(Laughter)

JUDGE RANSOM: So I'm going to ask if you could accommodate us by perhaps--

UNIDENTIFIED VOICE: Does it work a little like a guillotine?

JUDGE RANSOM: I'll try to talk faster than I've ever talked in my life.

(Laughter)

JUDGE RANSOM: The first area that I want to present to you is the area of court reorganization.

We were the first county in the state of Michigan to adopt the Judicial Council by joint administrative order and we have been very effectively moving forward with court reorganization before it ever surfaced in the legislature and what I'm about to show you are some of the accomplishments that we have achieved here with our Judicial Council and this joint effort.

Our Judicial Council, of course, is made up of a representative body of all of our Genesee County courts which include the 67th, 68th judicial--67th and 68th district courts, the probate court and the circuit court.

The courts have all received cross-assignments so that all of our judges are cross-assigned from district, probate, circuit.

We have created what we call a pro per docket and it's managed through family division referees and this is a specialized docket for domestic litigants who are unrepresented.

We have created a removal trial docket. The removal trial docket is a response to the abolition of the removal rule to process cases in the circuit court that otherwise fit the profile of the district courts. And we have processed 825 cases since we created this removal trial docket in 1997. We have 100 percent participation of our judges in the 67th and the 68th district courts in processing the trial of these cases which they handle by assignment to the circuit court.

We are unique among the counties of this state in our mediation process. We have a judge who sits as an independent third mediator on our tort panel and last year we processed 1700 cases through our mediation system.

Our family division published a 12 month assessment and that gave us the opportunity to evaluate what we have accomplished in providing the foundation for

where we want to go for the future in our family division.

We've created a jail work group. The jail work group is a representative body of law enforcement to manage jail population and currently we have been able to effectively manage a jail population with a very limited resource.

We have adopted by administrative order comprehensive docketing standards for all the divisions of the our circuit court--civil, criminal, family division.

We are participating in a juror awareness program with the State Bar of Michigan to enhance the representative--representation of our community on jurors--juries.

We have judges who are utilizing the conference trial technique which is an innovative trial technique where we receive evidence in a conference fashion. And I would suggest to you that this is truly a kinder and a more effective way to address families who are in domestic problem. Judge Newman who spoke to you here this morning is a very active proponent of that process.

As Yogi Barra said, "If you don't know where you're going, you may end up somewhere else." and we want to know where we're going and here is an outline of some of the projects that we have under consideration currently in the area of court reorganization. I'm going to be showing you the physical merger of our probate and circuit courts here momentarily. We are currently studying the administrative merger of the circuit and probate courts.

We're looking at a felony plea project which would expedite the disposition of detained defendants where district judges would accept guilty pleas in certain felony cases. We have made application to the Supreme Court for a drug court planning grant and we have also made application for a grant for a forensic examiner which would enable us to have a forensic examiner get around the bottle-neck that occurs with delays in getting forensic evaluations from the Forensic Center.

We are also looking at the creation of a financial services division which would be a joint court effort to deal with the finances and the collection endeavors of our respective courts.

We have an instruction project on the way currently. We call it the Courthouse Square Project. This is a comprehensive construction project that includes our courthouse as well as some ancillary facilities. It will include the--and is under construction right now--the restoration and renovation of our existing courthouse. It will include a 60,000 square foot addition to our current court facility. It will result in the consolidation of our probate and our circuit courts in one facility and the current circuit courthouse is being preserved and restored because it is on the state and national historic registries.

Our Courthouse Square Project includes a facility that was completed and upon last month and our probation department has moved into this as well as a work

release facility that is managed under Sheriff Robert McCall (phonetic) and that has just opened in the last week.

This is a view of one of the historic courtrooms in one of our current circuit court building. This was the only courtroom that was untouched in the era of the 1960's and this courtroom is going to serve as a model for the restoration of our other historical courtrooms. The courtroom that you'll see next is the courtroom that I occupy and that courtroom looked very similar to the preceding one. In the late 60's when supposedly renovating the courthouse, the ceilings were dropped, a false ceiling was installed, the mural was removed from the back wall, the lighting of course has changed. It's our endeavor to restore that courtroom, remove the false ceilings, expose the architectural moldings, the gold leaf that surrounds the border of the ceiling and to also unveil the historical paintings of the judges that surround the perimeter above this false ceiling and the Genesee County Bar Foundation has issued a matching grant challenge where they are going to match dollar per dollar contributions that will enable us to restore the mural that was removed from the back wall of this courtroom.

We are in the process of restoring all the furniture. We have returned all the furniture from the 1926 era to the courtrooms and this is the restoration that you see of some of that furniture. This is a fainting coach. This was most recently used by defense attorney Don Rockwell when Geoffrey Fieger got a $35 million verdict in a case in the circuit court. That's among the recent pieces of furniture from our court building.

All of our courtrooms are going to be equipped with the latest video technology; the wires, the cables, are going to be removed from all the courtrooms. We are going to have a new law library. The space is going to be increased, the collection is going to migrate to a digital format and we are also going to have new jury quarters. In the jury quarters, jurors are going to have the capability of bringing lap top computers and they will have the ability to have hook-ups while they are there for jury service.

I won't go through all the particulars of what we're going to add here to the--by way of conference rooms. We are going to have a lounge area that's going to serve as a media room as well as a lounge for the bar association. And the courthouse is going to be designed, we're going to facilitate the service of the public that is noncourtroom traffic on the first floors and n the second floors and the courtrooms will be in their specialized divisions on the upper floors of the building.

We have some architectural drawings. This is not the color scheme of the new building, but the red areas depict the addition to the current courthouse and this view is the north elevation. The lower view is the south elevation. And the next clip shows you the front--the east elevation of our current circuit court building. There will be two main entrances to this building and this will continue to be a main

entrance and then on the west side this also will be a main entrance and there will be--what you see here in this area is a two-story portico that will be a glass enclosure and will house a circular staircase that will go to the upper levels. And then the third floor of the facility will house the civil division and the criminal division. The fifth floor will house the family division.

Lest you--

UNIDENTIFIED VOICE: Judge, that's a new building--

JUDGE RANSOM: It will be a combined renovation and addition.

UNIDENTIFIED VOICE: Okay.

JUDGE RANSOM: The red areas are the addition. Our addition--our current court building is 76,000 square feet. We're adding 60,000. So we're adding almost as big a building as we have.

I'm really enthused about the prospect that we're going to be able to bring the probate and circuit courts together and I think that not only will it be more effect in the delivery of our services to the family--

UNIDENTIFIED VOICE: --Right now, they're across the parking lot.

JUDGE RANSOM: Two locations. And I think that with the physical merger we're going to be in a position to accomplish some administrative consolidation that we have undertaken at this point. So it's an exciting time here for us and I think that we have a bright future here in Genesee County.

Lest we might jump to the conclusion, that I deserve the credit (inaudible) Power Point presentation and I wanted to dispel that right away. The credit for this goes to three people; one is Janet Patsy (phonetic) who is our assistant court administrator, who is right here next to me; Rob Kaufman is the fellow who scrambled around here and got this going, in the blue shirt--Rob is with the county clerks office and of a great technical mind; and Barbara Menear who is our court administrator and she's in the back. The three of them collaborative and with Rob's technical knowledge and Janet's (inaudible).

CHIEF JUSTICE WEAVER: Thank you. Any questions?

(No response)

CHIEF JUSTICE WEAVER: We really appreciate being updated on all of this.

JUDGE RANSOM: Thanks for taking the time.

CHIEF JUSTICE WEAVER: Thank you. Now with that, I think, Judge, from here I will close the administrative hearing. Okay.

(Proceeding concluded)